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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SUAVECITA BERNAL, individually, and
on behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

GRAHAM PACKAGING PET
TECHNOLOGIES INC., a Delaware
corporation; GRAHAM PACKAGING
COMPANY, L.P., a Delaware limited
partnership; GRAHAM PACKAGING
COMPANY, INC., a Delaware corporation;
GEC PACKAGING TECHNOLOGIES
LLC, a Delaware limited liability company;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 1:20-CV-01045-AWI-EPG

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET
SEQ.***

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California

- Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Suavecita Bernal, individually and on behalf of all other members of the
2 public similarly situated and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to Rule 23 of the Federal Rules of Civil
6 Procedure to recover wages and all other available relief on behalf of Plaintiff and all
7 similarly situated current and former non-exempt, hourly paid employees of Defendants, and a
8 non-class representative enforcement action brought pursuant to the Labor Code Private
9 Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to
10 recover civil penalties and any other available relief on behalf of Plaintiff, the State of
11 California, and other current and former employees who worked for Defendants in California
12 as non-exempt, hourly paid employees and received at least one wage statement and against
13 whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor
14 Code or any provision regulating hours and days of work in the applicable Industrial Welfare
15 Commission (“IWC”) Wage Order were committed, as set forth in this complaint. The
16 monetary damages, penalties, and restitution sought by Plaintiff exceed the minimal
17 jurisdiction limits of the Superior Court and will be established according to proof at trial.
18 This Court has jurisdiction over this action pursuant to the California Constitution, Article VI,
19 section 10. The statutes under which this action is brought do not specify any other basis for
20 jurisdiction. Plaintiff’s share of damages, penalties, and other relief sought in this action does
21 not exceed \$75,000.

22 2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §
23 1332(d) and based on 28 U.S.C. §§ 1441, 1446.

24 3. Venue is proper in this Court because this case was originally filed in the
25 Superior Court of California for the County of Stanislaus. Venue properly lies in the United
26 States District Court for the Eastern District of California pursuant to 28 U.S.C. §§ 84(a),
27 1391(b) and 1441(a). The PAGA statute authorizes aggrieved employees to sue directly as the
28 proxy of the State of California for civil penalties for violations of various provisions in the

California Labor Code..

THE PARTIES

4. Plaintiff Suavecita Bernal is a resident of Turlock, in Stanislaus County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Packaging Specialist from approximately August to October 2019. Plaintiff worked for Defendants at their location in Modesto, California. During her employment, Plaintiff typically worked eight (8) hours or more per day, and five (5) days per week. Plaintiff's primary job duties included, without limitation, operating heavy machinery, handling defective packaging, assembling and stacking packages, cleaning and maintaining machines, and logging and reporting containers.

5. GRAHAM PACKAGING PET TECHNOLOGIES INC. was and is, upon information and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

6. GRAHAM PACKAGING COMPANY, L.P. was and is, upon information and belief, a Delaware limited partnership, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

7. GRAHAM PACKAGING COMPANY, INC. was and is, upon information and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

8. GEC PACKAGING TECHNOLOGIES LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

9. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to

1 amend the complaint and serve such fictitiously named Defendants once their names and
2 capacities become known.

3 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
4 were the partners, agents, owners, or managers of GRAHAM PACKAGING PET
5 TECHNOLOGIES INC.; GRAHAM PACKAGING COMPANY, L.P.; GRAHAM
6 PACKAGING COMPANY, INC.; and GEC PACKAGING TECHNOLOGIES LLC at all
7 relevant times.

8 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
9 acts and omissions alleged herein was performed by, or is attributable to, GRAHAM
10 PACKAGING PET TECHNOLOGIES INC.; GRAHAM PACKAGING COMPANY, L.P.;
11 GRAHAM PACKAGING COMPANY, INC.; GEC PACKAGING TECHNOLOGIES LLC;
12 and/or DOES 1 through 10 (collectively, “Defendants” or “GRAHAM PACKAGING”), each
13 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
14 each of the other co-Defendants and was acting within the course and scope of such agency,
15 employment, joint venture, or concerted activity with legal authority to act on the others’
16 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
17 policy of Defendants.

18 12. At all relevant times, Defendants, and each of them, ratified each and every act
19 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
20 and abetted the acts and omissions of each and all the other Defendants in proximately causing
21 the damages herein alleged.

22 13. Plaintiff is informed and believes, and thereon alleges, that each of said
23 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
24 omissions, occurrences, and transactions alleged herein.

25 14. Under California law, Defendants are jointly and severally liable as employers
26 for the violations alleged herein because they have each exercised sufficient control over the
27 wages, hours, working conditions, and employment status of Plaintiff and class members.
28 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and

1 controlled their work schedule and/or conditions of employment, determined their rate of pay,
2 and maintained their employment records. Defendants suffered or permitted Plaintiff and
3 class members to work and/or “engaged” Plaintiff and class members so as to create a
4 common-law employment relationship. As joint employers of Plaintiff and class members,
5 Defendants are jointly and severally liable for the civil penalties and all other relief available
6 to Plaintiff and class members under the law.

7 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
8 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
9 members because Defendants have:

- 10 (a) jointly exercised meaningful control over the work performed by
11 Plaintiff and class members;
- 12 (b) jointly exercised meaningful control over Plaintiff’s and class members’
13 wages, hours, and working conditions, including the quantity, quality
14 standards, speed, scheduling, and operative details of the tasks
15 performed by Plaintiff and class members;
- 16 (c) jointly required that Plaintiff and class members perform work which is
17 an integral part of Defendants’ businesses; and
- 18 (d) jointly exercised control over Plaintiff and class members as a matter of
19 economic reality in that Plaintiff and class members were dependent on
20 Defendants, who shared the power to set the wages of Plaintiff and class
21 members and determined their working conditions, and who jointly
22 reaped the benefits from the underpayment of their wages and
23 noncompliance with other statutory provisions governing their
24 employment.

25 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
26 there has existed a unity of interest and ownership between Defendants such that any
27 individuality and separateness between the entities has ceased.

28 17. GRAHAM PACKAGING PET TECHNOLOGIES INC.; GRAHAM

1 PACKAGING COMPANY, L.P.; GRAHAM PACKAGING COMPANY, INC.; GEC
2 PACKAGING TECHNOLOGIES LLC; and DOES 1 through 10 are therefore alter egos of
3 each other.

4 18. Adherence to the fiction of the separate existence of Defendants would permit
5 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
6 from liability for the wrongful acts committed by them under the name GRAHAM
7 PACKAGING.

8 19. Plaintiff further alleges, upon information and belief, that Defendants
9 GRAHAM PACKAGING PET TECHNOLOGIES INC.; GRAHAM PACKAGING
10 COMPANY, L.P.; GRAHAM PACKAGING COMPANY, INC.; and GEC PACKAGING
11 TECHNOLOGIES LLC are alter egos of each other for the following reasons:

- 12 (a) On the California Secretary of State's website
13 (<https://businesssearch.sos.ca.gov/>), GRAHAM PACKAGING PET
14 TECHNOLOGIES INC. and GRAHAM PACKAGING COMPANY,
15 L.P. share the same entity address and mailing address, "700 INDIAN
16 SPRINGS DR STE 100, LANCASTER PA 17601;"
- 17 (b) On information and belief, GEC PACKAGING TECHNOLOGIES LLC
18 is the parent company of GRAHAM PACKAGING COMPANY, INC.,
19 and GEC PACKAGING TECHNOLOGIES LLC is identified as an
20 "affiliated" company of GRAHAM PACKAGING COMPANY, L.P. in
21 Defendants' employment documents provided to Plaintiff and class
22 members;
- 23 (c) On information and belief, GRAHAM PACKAGING PET
24 TECHNOLOGIES INC.; GRAHAM PACKAGING COMPANY, L.P.;
25 GRAHAM PACKAGING COMPANY, INC.; and GEC PACKAGING
26 TECHNOLOGIES LLC share the same agent for service of process,
27 "CORPORATION SERVICE COMPANY;" and
- 28 (d) On information and belief, GRAHAM PACKAGING PET

1 TECHNOLOGIES INC.; GRAHAM PACKAGING COMPANY, L.P.;
2 GRAHAM PACKAGING COMPANY, INC.; and GEC PACKAGING
3 TECHNOLOGIES LLC utilize the same standardized employment
4 forms and issue the same employment policies.

5 **GENERAL ALLEGATIONS**

6 20. Defendants are a global manufacturer of customizable packaging solutions.
7 Defendants operate several manufacturing plants in California. Upon information and belief,
8 Defendants maintain a single, centralized Human Resources (“HR”) department at their
9 company headquarters in Lancaster, Pennsylvania, which is responsible for the recruiting and
10 hiring of new employees, and communicating and implementing Defendants’ company-wide
11 policies, including timekeeping policies and meal and rest period policies, to employees
12 throughout California.

13 21. In particular, Plaintiff and class members, on information and belief, received
14 the same standardized documents and/or written policies. Upon information and belief, the
15 usage of standardized documents and/or written policies, including new-hire documents,
16 indicate that Defendants dictated policies at the corporate level and implemented them
17 company-wide, regardless of their employees’ assigned locations or positions. Upon
18 information and belief, Defendants set forth uniform policies and procedures in several
19 documents provided at an employee’s time of hire, including, but not limited to, Offer of
20 Employment, Plant Safety Agreement, and Employee Handbook.

21 22. Upon information and belief, Defendants maintain a centralized Payroll
22 department at their company headquarters in Lancaster, Pennsylvania, which processes payroll
23 for all non-exempt, hourly paid employees working for Defendants at their various locations
24 and jobsites in California, including Plaintiff and class members. Based upon information and
25 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
26 employees in California, irrespective of their work locations. Upon information and belief,
27 Defendants process payroll for departing employees in the same manner throughout the State
28 of California, regardless of the manner in which each employee’s employment ends.

23. Defendants continue to employ non-exempt or hourly paid employees in California.

24. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

25. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class members were not paid for all hours worked because all hours worked were not recorded.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and class members were not paid at least minimum wages for work done off-the-clock.

28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and

1 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
2 and class members were not authorized and permitted to take compliant rest periods, nor did
3 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
4 pay at their regular rates of pay when they were not authorized and permitted to take a
5 compliant rest period.

6 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to receive complete and
8 accurate wage statements in accordance with California law. In violation of the California
9 Labor Code, Plaintiff and class members were not provided complete and accurate wage
10 statements.

11 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that they had a duty to maintain accurate and complete payroll records in
13 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
14 and intentionally failed to do so.

15 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to timely payment of all
17 wages earned upon termination of employment. In violation of the California Labor Code,
18 Plaintiff and class members did not receive payment of all wages due, including, but not
19 limited to, overtime wages, minimum wages, and/or meal and rest period premium wages,
20 within permissible time periods.

21 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to timely payment of wages
23 during their employment. In violation of the California Labor Code, Plaintiff and class
24 members did not receive payment of all wages, including, but not limited to, overtime wages,
25 minimum wages, and/or meal and rest period premium wages, within permissible time
26 periods.

27 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, that Defendants knew or should have known that they had a duty to cover the costs

1 and expenses Plaintiff and class members incurred obtaining mandatory physical examinations
2 and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

3 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive itemized wage
5 statements or separate written statements showing the amount of paid sick leave available, or
6 paid time off provided in lieu of sick leave. In violation of the California Labor Code,
7 Defendants failed to provide Plaintiff and class members with written itemized wage
8 statements or separate written statements showing this information.

9 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that they had a duty to maintain, for Plaintiff and/or class members, a
11 temperature in work areas that provided reasonable comfort consistent with industry-wide
12 standards for the nature of the process and the work performed, and to take all feasible means
13 to reduce excessive heat or humidity to a degree providing reasonable comfort, but failed to
14 do so.

15 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to receive full
17 reimbursement for all business-related expenses and costs they incurred during the course and
18 scope of their employment and that they did not receive full reimbursement of applicable
19 business-related expenses and costs incurred.

20 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
21 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
22 and class members with safety devices and safeguards, such as personal protective equipment,
23 to protect their life, safety, and health in the workplace, but willfully, knowingly, and
24 intentionally failed to do so.

25 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, Defendants knew or should have known that they had a duty to compensate
27 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
28 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and

1 falsely represented to Plaintiff and class members that they were properly denied wages, all in
2 order to increase Defendants' profits.

3 **PAGA REPRESENTATIVE ALLEGATIONS**

4 40. At all times herein set forth, PAGA provides that any provision of law under
5 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
6 assessed and collected by the LWDA for violations of the California Labor Code and
7 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
8 civil action brought on behalf of themselves and other current or former employees pursuant
9 to procedures outlined in California Labor Code section 2699.3.

10 41. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
11 person who was employed by the alleged violator and against whom one or more of the
12 alleged violations was committed."

13 42. Plaintiff and other current and former employees of Defendants are "aggrieved
14 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
15 or former employees and one or more of the alleged violations were committed against them.

16 43. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
17 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
18 following requirements have been met:

- 19 (a) The aggrieved employee or representative shall give written notice by
20 online filing with the LWDA and by certified mail to the employer of
21 the specific provisions of the California Labor Code alleged to have
22 been violated, including the facts and theories to support the alleged
23 violation.
- 24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(a) and any employer response to that notice shall be
26 accompanied by a filing fee of seventy-five dollars (\$75).
- 27 (c) The LWDA shall notify the employer and the aggrieved employee or
28 representative by certified mail that it does not intend to investigate the

1 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
2 the postmark date of the aggrieved employee’s notice. Upon receipt of
3 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
4 (65) calendar days of the postmark date of the aggrieved employee’s
5 notice, the aggrieved employee may commence a civil action pursuant
6 to California Labor Code section 2699 to recover civil penalties.

7 44. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
8 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
9 provision other than those listed in Section 2699.5 after the following requirements have been
10 met:

- 11 (a) The aggrieved employee or representative shall give written notice by
12 online filing with the LWDA and by certified mail to the employer of
13 the specific provisions of the California Labor Code alleged to have
14 been violated (other than those listed in Section 2699.5), including the
15 facts and theories to support the alleged violation.
- 16 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
17 2699.3(c) and any employer response to that notice shall be
18 accompanied by a filing fee of seventy-five dollars (\$75).
- 19 (c) The employer may cure the alleged violation within thirty-three (33)
20 calendar days of the postmark date of the notice sent by the aggrieved
21 employee or representative. The employer shall give written notice
22 within that period of time by certified mail to the aggrieved employee or
23 representative and by online filing with the LWDA if the alleged
24 violation is cured, including a description of actions taken, and no civil
25 action pursuant to Section 2699 may commence. If the alleged violation
26 is not cured within the 33-day period, the aggrieved employee may
27 commence a civil action pursuant to Section 2699.

28 45. On July 10, 2020, Plaintiff provided written notice by online filing to the

1 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
2 Code alleged to have been violated, including facts and theories to support the alleged
3 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
4 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
5 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
6 Plaintiff PAGA Case Number LWDA-CM-796412-20. A true and correct copy of Plaintiff's
7 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

8 46. As of the filing date of this complaint, over 65 days have passed since Plaintiff
9 sent the notice described above to the LWDA, and the LWDA has not responded that it
10 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

11 47. Thus, Plaintiff has satisfied the administrative prerequisites under California
12 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
13 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 246,
14 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

15 48. Labor Code section 558(a) provides "[a]ny employer or other person acting on
16 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
17 provision regulating hours and days of work in any order of the Industrial Welfare
18 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
19 dollars (\$50) for each underpaid employee for each pay period for which the employee was
20 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
21 underpaid employee for each pay period for which the employee was underpaid" Labor
22 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
23 to any other civil or criminal penalty provided by law."

24 49. Defendants, at all times relevant to this complaint, were employers or persons
25 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
26 rights by violating various sections of the California Labor Code as set forth above.

27 50. As set forth below, Defendants have violated numerous provisions of both the
28 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage

Order.

51. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

CLASS ACTION ALLEGATIONS

52. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under Rule 23 of the Federal Rules of Civil Procedure.

53. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

54. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

55. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

56. Members of the Class and Subclass are referred to herein as "class members."

57. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

58. This action is brought and properly may be maintained as a class action pursuant to the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(1), (b)(2), or (b)(3) and satisfies the requirements thereof.

59. According to Defendants' removal papers, there are at least 282 non-exempt,

1 hourly paid employees working for Defendants across California during the relevant period.
2 Thus, it is reasonable to presume that the members of the class are so numerous that joinder of
3 all members is impracticable. The disposition of their claims in a class action will provide
4 substantial benefits to the parties and the Court.

5 60. Plaintiff's claims are typical of those of the class members, because Plaintiff
6 suffered the violations set forth in this First Amended Complaint.

7 61. Plaintiff will adequately protect the interests of class members. Plaintiff has no
8 interests that are adverse to or conflict with class members and is committed to the vigorous
9 prosecution of this action. To that end, Plaintiff has retained counsel who is competent and
10 experienced in handling class actions on behalf of employees.

11 62. A class action is superior to all other available methods for the fair and efficient
12 adjudication of this controversy since joinder of all members is impracticable. Furthermore,
13 as the amount suffered by individual class members may be relatively small, the expense and
14 burden of individual litigation make it impossible for members of the Class to individually
15 redress the wrongs done to them. There will be no difficulty in the management of this case
16 as a class action.

17 63. There are common questions of law and fact as to class members that
18 predominate over questions affecting only individual members, including, but not limited to:

- 19 (a) Whether Defendants required Plaintiff and class members to work over
20 eight (8) hours per day, over twelve (12) hours per day, or over forty
21 (40) hours per week and failed to pay all legally required overtime
22 compensation to Plaintiff and class members;
23 (b) Whether Defendants failed to pay Plaintiff and class members at least
24 minimum wages for all hours worked;
25 (c) Whether Defendants failed to provide Plaintiff and class members with
26 meal periods;
27 (d) Whether Defendants failed to authorize and permit Plaintiff and class
28 members to take rest periods;

- (e) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (f) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (g) Whether Defendants failed to pay earned overtime wages, minimum wages, and meal and rest period premium wages due to Plaintiff and class members upon their discharge;
- (h) Whether Defendants failed timely to pay overtime wages, minimum wages, and meal and rest period premium wages to Plaintiff and class members during their employment;
- (i) Whether Defendants failed to pay Plaintiff and class members for the costs of mandatory physical examinations and/or drug testing;
- (j) Whether Defendants failed to provide Plaintiff and class members with written notice on wage statements listing requisite sick pay information set forth in Labor Code section 246(i);
- (k) Whether Defendants failed to maintain for Plaintiff and/or class members a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed, and to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort;
- (l) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (m) Whether Defendants failed to provide Plaintiff and class members with safety devices and safeguards, such as personal protective equipment;
- (n) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200,

et seq.; and

- (o) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

FIRST CAUSE OF ACTION

**Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime
(Against all Defendants)**

64. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

65. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

66. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

67. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

68. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

69. California Labor Code section 510 codifies the right to overtime compensation

1 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
2 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
3 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
4 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
5 in a day on the seventh (7th) day of work.

6 70. During the relevant time period, Defendants willfully failed to pay all overtime
7 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
8 class members were not paid overtime premiums for all of the hours they worked in excess of
9 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
10 hours in a week, because all hours worked were not recorded.

11 71. First, during the relevant period, Defendants had a company-wide policy and/or
12 practice of improperly rounding employees' clock-in and clock-out times in their timekeeping
13 system to the nearest tenth (0.1) of an hour. Defendants' rounding policy resulted in the
14 failure to compensate Plaintiff and class members fully for all hours worked, causing Plaintiff
15 and class members to not be paid overtime wages for all of the overtime hours they actually
16 worked. Defendants' policy of rounding is unfair and has, over time, resulted in the
17 underpayment of wages to Plaintiff and class members. To the extent Defendants' rounding
18 policy has taken away time worked that was eligible for overtime, Plaintiff and class members
19 were denied overtime pay for all hours worked.

20 72. Second, Defendants had a company-wide practice and/or policy of requiring
21 Plaintiff and class members to perform work-related tasks while off-the-clock, but prevented
22 them from accounting for and recording this time in the timekeeping system. For example,
23 Plaintiff and class members were required to attend mandatory meetings lasting 5-10 minutes
24 prior to their shifts, but were prevented from clocking in until their scheduled shift start-time,
25 upon threat of discipline. Plaintiff would report to work 10 minutes prior to the start of her
26 scheduled shift, but was not permitted to clock in until her scheduled shift start-time, after the
27 meeting was completed. Additionally, Defendants required Plaintiff and class members to
28 attend off-site training sessions, such as new-hire orientations, but did not compensate them

1 for their time spent traveling to these training sessions. For example, after clocking out,
2 Plaintiff spent an hour traveling to another one of Defendants' plants to attend new-hire
3 orientation, attend training sessions, or complete paperwork. Thus, Defendants failed to track
4 all of this time spent working before clocking in or after clocking out, and Plaintiff and class
5 members received no compensation for this time.

6 73. Third, during the relevant period, Defendants had, and continue to have, a
7 company-wide policy and/or practice of understaffing their worksites while assigning heavy
8 workloads, resulting in a failure to provide Plaintiff and class members with adequate meal
9 period coverage. As a result of this lack of meal period coverage, Plaintiff and class members
10 were not always afforded uninterrupted 30-minute meal periods during shifts when they were
11 entitled to receive a meal period. For example, Plaintiff and class members would have their
12 meal periods interrupted to complete such work-related tasks as responding to questions about
13 job duties from coworkers. Thus, Plaintiff and class members missed and/or had meal periods
14 interrupted in order to complete their assigned workloads. Defendants did not pay Plaintiff
15 and class members for the time they continued to perform tasks during meal periods.

16 74. Defendants knew or should have known that as a result of these company-wide
17 practices and/or policies, Plaintiff and class members were performing their assigned duties
18 off-the-clock before and after their shifts and during meal periods, and were suffered or
19 permitted to perform work for which they were not paid. Because Plaintiff and class members
20 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
21 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
22 members were not paid overtime wages for all of the overtime hours they actually worked.

23 75. Defendants' failure to pay Plaintiff and class members the balance of overtime
24 compensation as required by California law, violates the provisions of California Labor Code
25 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
26 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
27 and attorneys' fees.

28 **SECOND CAUSE OF ACTION**

**Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)**

76. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

77. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

78. As stated, Defendants had a company-wide policy and/or practice of rounding Plaintiff’s and class members’ hourly clock-in and clock-out times in their timekeeping system to the nearest tenth, resulting in the failure to compensate them for all hours worked. Furthermore, as set forth above, Plaintiff and class members were required to perform work off-the-clock by attending mandatory meetings under the direction of Defendants’ management, time for which they were not paid. As also stated above, due to Defendants’ policy and/or practice of understaffing while assigning heavy workloads, Plaintiff and class members were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

79. Furthermore, Defendants maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, Defendants were in control of scheduling the time period for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, Defendants gave Plaintiff strict instructions to obtain drug testing and a physical

1 examination, and Plaintiff underwent the testing for the sole benefit of Defendants. Plaintiff
2 followed Defendants' instructions and spent 50 minutes total traveling to and from the
3 medical facility designated by Defendants, and an additional 5 hours waiting at the medical
4 facility and undergoing the requisite testing. However, Defendants did not compensate
5 Plaintiff and class members for the time they spent traveling to and from the medical facilities
6 and undergoing the mandatory drug testing and/or physical examinations.

7 80. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff
8 and class members worked through that qualified for overtime premium payment. To the
9 extent that these off-the-clock hours did not qualify for overtime premium payment,
10 Defendants did not pay at least minimum wages for those hours worked off-the-clock in
11 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

12 81. Defendants' failure to pay Plaintiff and class members minimum wages violates
13 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
14 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
15 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

16 **THIRD CAUSE OF ACTION**

17 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period** 18 **Violations** 19 **(Against all Defendants)**

20 82. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 83. At all relevant times herein set forth, California Labor Code section 512(a)
23 provides that an employer may not require, cause, or permit an employee to work for a period
24 of more than five (5) hours per day without providing the employee with a meal period of not
25 less than thirty (30) minutes, except that if the total work period per day of the employee is
26 not more than six (6) hours, the meal period may be waived by mutual consent of both the
27 employer and the employee. Under California law, first meal periods must start after no more
28 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.

2012).

84. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

85. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

86. During the relevant time period, as stated, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads. As a result, Plaintiff and class members would be forced to work in excess of five (5) hours before taking a meal period, have their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, during her employment, Plaintiff would have her meal periods interrupted by her coworkers to discuss work-related matters. Plaintiff also received late meal periods on September 12, 2019 (after 5 hours and 11 minutes of work); September 19, 2019 (after 5 hours and 50 minutes of work); and on September 20, 2019 (after 5 hours and 10 minutes of work). Plaintiff and class members did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

87. Moreover, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of Defendants' practices and/or policies, Plaintiff and class members have not received premium pay for all missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiff and class members compliant meal periods in violation of California Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period premiums due.

88. Defendants' conduct violates the applicable IWC Wage Order, and California

1 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
2 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
3 rate of compensation for each work day that the meal period was not provided.

4 **FOURTH CAUSE OF ACTION**

5 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**
6 **(Against all Defendants)**

7 89. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

9 90. At all relevant times herein set forth, the applicable IWC Wage Order and
10 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
11 members' employment by Defendants.

12 91. At all relevant times, the applicable IWC Wage Order provides that "[e]very
13 employer shall authorize and permit all employees to take rest periods, which insofar as
14 practicable shall be in the middle of each work period" and that the "rest period time shall be
15 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
16 hours or major fraction thereof" unless the total daily work time is less than three and one-half
17 (3½) hours.

18 92. At all relevant times, California Labor Code section 226.7 provides that no
19 employer shall require an employee to work during any rest period mandated by an applicable
20 order of the California IWC. To comply with its obligation to authorize and permit rest
21 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
22 employer must "relinquish any control over how employees spend their break time, and
23 relieve their employees of all duties — including the obligation that an employee remain on
24 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
25 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
26 California Labor Code section 226.7, Plaintiff and class members are entitled to recover from
27 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
28 required rest period was not authorized and permitted.

1 93. During the relevant time period, Defendants regularly failed to authorize and
2 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
3 period worked or major fraction thereof. As with meal periods, Defendants' policies and/or
4 practice of understaffing and assigning heavy workloads prevented Plaintiff and class
5 members from being relieved of all duty in order to take compliant rest periods. Defendants
6 also failed to schedule rest periods, which, coupled with Defendants' failure to provide
7 adequate rest period coverage, further led to Plaintiff and class members not being authorized
8 and permitted to take rest periods.

9 94. Furthermore, during the relevant time period, Defendants maintained a
10 company-wide on-premises rest period policy, which mandated that Plaintiff and class
11 members remain on Defendants' premises during their rest periods. For example, Defendants
12 verbally told Plaintiff during her onboarding/new-hire orientation that she could not leave
13 Defendants' premises during her rest periods. Because Plaintiff and class members were
14 restricted from leaving the premises during rest periods, they were denied the ability to use
15 their rest periods freely for their own purposes. Thus, Defendants effectively maintained
16 control over Plaintiff and class members during rest periods.

17 95. As a result of Defendants' practices and policies, Plaintiff and class members
18 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
19 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
20 throughout her employment, Plaintiff would miss her rest periods due to a lack of coverage.

21 96. Defendants have also engaged in a systematic, company-wide practice and/or
22 policy of not paying rest period premiums owed when rest periods are not authorized and
23 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
24 to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the
25 applicable IWC Wage Order.

26 97. Defendants' conduct violates the applicable IWC Wage Order and California
27 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
28 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of

1 compensation for each work day that a compliant rest period was not authorized and
2 permitted.

3 **FIFTH CAUSE OF ACTION**

4 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
5 **Statements and Failure to Maintain Accurate Payroll Records**
6 **(Against all Defendants)**

7 98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

9 99. At all relevant times herein set forth, California Labor Code section 226(a)
10 provides that every employer shall furnish each of his or her employees an accurate and
11 complete itemized wage statement in writing, including, but not limited to, the name and
12 address of the legal entity that is the employer, the inclusive dates of the pay period, total
13 hours worked, and all applicable rates of pay.

14 100. At all relevant times, Defendants have knowingly and intentionally provided
15 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
16 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
17 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
18 applicable hourly rates in effect during the pay period, including overtime rates of pay, and
19 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
20 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

21 101. Because Defendants did not accurately record the time Plaintiff and Subclass
22 members spent working off the clock and improperly rounded their total hours worked,
23 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
24 and Subclass members in compliance with section 226(a)(1) and 226(a)(5). For the same
25 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and
26 Subclass members in violation of section 226(a)(2), and failed to list the applicable hourly
27 rates of pay in effect during the pay period and corresponding accurate number of work hours
28 worked at each hourly rate in violation of section 226(a)(9).

1 102. The wage statement deficiencies also include, without limitation, failing to list
2 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
3 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
4 only the last four digits of his or her social security number or an employee identification
5 number other than a social security number; failing to list the name and address of the legal
6 entity that is the employer; failing to list the inclusive dates of the period for which class
7 members were paid; and/or failing to state all hours worked as a result of not recording or
8 stating hours worked off-the-clock.

9 103. California Labor Code section 1198 provides that the maximum hours of work
10 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
11 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
12 employment of any employees for longer hours than those fixed by the order or under
13 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
14 Wage Order, employers are required to keep accurate time records showing when the
15 employee begins and ends each work period and meal period. During the relevant time
16 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
17 and meal period start and stop times for Plaintiff and Subclass members, in violation of
18 section 1198.

19 104. California Labor Code section 1174(d) provides that “[e]very person employing
20 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
21 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
22 plants or establishments at which employees are employed, payroll records showing the hours
23 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
24 applicable piece rate paid to, employees employed at the respective plants or establishments
25” At all relevant times, and in violation of Labor Code section 1174(d), Defendants
26 willfully failed to maintain accurate payroll records for Plaintiff and Subclass members
27 showing the daily hours they worked and the wages paid thereto as a result of failing to record
28 the off-the-clock hours that they worked and improperly rounding Plaintiff’s and Subclass

members' total hours worked.

105. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

106. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

107. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premium wages that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

108. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

109. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

110. Defendants' failure to pay Plaintiff and class members who are no longer

1 employed by Defendants their wages earned and unpaid at the time of discharge, or within
2 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
3 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
4 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
5 thirty (30) day maximum pursuant to California Labor Code section 203.

6 **SEVENTH CAUSE OF ACTION**

7 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
8 **Employment**
9 **(Against all Defendants)**

10 111. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
11 and every allegation set forth above.

12 112. This cause of action is dependent upon, and wholly derivative of, the overtime
13 wages, minimum wages, and/or meal and rest period premium wages, that were not timely
14 paid to Plaintiff and those class members.

15 113. At all times relevant herein set forth, Labor Code section 204 provides that all
16 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
17 days, inclusive, of any calendar month, other than those wages due upon termination of an
18 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
19 the month during which the labor was performed.

20 114. At all times relevant herein, Labor Code section 204 provides that all wages
21 earned by any person in any employment between the sixteenth (16th) and the last day,
22 inclusive, of any calendar month, other than those wages due upon termination of an
23 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
24 month.

25 115. At all times relevant herein, Labor Code section 204 provides that all wages
26 earned for labor in excess of the normal work period shall be paid no later than the payday for
27 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
28 204 provides that the requirements of this section are deemed satisfied by the payment of

1 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
2 seven (7) calendar days following the close of the payroll period.

3 116. During the relevant time period, Defendants willfully failed to pay Plaintiff and
4 class members all wages due including, but not limited to, overtime wages, minimum wages,
5 and meal and rest period premium wages, within the time periods specified by California
6 Labor Code section 204.

7 117. Defendants' failure to pay Plaintiff and class members all wages due violates
8 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
9 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

10 **EIGHTH CAUSE OF ACTION**

11 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**
12 **(Against all Defendants)**

13 118. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 119. At all times herein set forth, California Labor Code section 2802 provides that
16 an employer must reimburse employees for all necessary expenditures and losses incurred by
17 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
18 to prevent employers from passing off their cost of doing business and operating expenses on
19 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
20 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: "[w]hen tools or
21 equipment are required by the employer or are necessary to the performance of a job, such
22 tools and equipment shall be provided and maintained by the employer, except that an
23 employee whose wages are at least two (2) times the minimum wage provided herein may be
24 required to provide and maintain hand tools and equipment customarily required by the trade
25 or craft."

26 120. First, during the relevant time period, Defendants had a company-wide policy
27 of requiring Plaintiff and class members to utilize their own personal vehicles for work
28 purposes such as driving to off-site training sessions and new-hire orientations, but failed to

1 reimburse them for all costs of travel, including mileage. For example, Plaintiff drove
2 approximately 30 miles total traveling to another one of Defendants' plants to attend new-hire
3 orientation, attend training sessions, or complete paperwork. Although Defendants required
4 Plaintiff and class members to utilize their own vehicles to travel to and from off-site training
5 sessions, Defendants did not reimburse them fully for all of their travel expenses.

6 121. Second, Defendants also had a company-wide policy of requiring Plaintiff and
7 class members to travel in their own personal vehicles to obtain mandatory drug testing and/or
8 physical examinations, but did not reimburse them for their travel expenses, including
9 mileage. Defendants maintained and implemented a company-wide policy of requiring
10 employees to travel to a medical facility on their own time and using their own personal
11 vehicles to undergo mandatory drug testing and/or physical examinations. At all times,
12 Defendants were in control of scheduling the date and time for the testing and/or physical
13 examinations, selecting the provider or facility where the testing and/or physical examinations
14 were to take place, and determining the scope of the testing and/or physical examinations.
15 Defendants gave Plaintiff and class members strict instructions to obtain drug testing and
16 physical examinations, and Plaintiff and class members underwent the testing and physical
17 examinations for the sole benefit of Defendants.

18 122. As described above, Plaintiff followed Defendants' instructions, traveled for
19 approximately 50 minutes roundtrip in her personal vehicle, and underwent Defendants' drug
20 testing and physical examination, but was not reimbursed for her mileage to and from the
21 medical facility. Although Defendants required Plaintiff and class members to undergo drug
22 testing and/or physical examinations, Defendants failed to reimburse them for their travel
23 expenses.

24 123. Defendants could have provided Plaintiff and class members with the actual
25 tools for use on the job, such as company vehicles, or Defendants could have fully reimbursed
26 employees for the costs of their travel expenses and mileage. Instead, Defendants passed
27 these operating costs off onto Plaintiff and class members. At all relevant times, Plaintiff did
28 not earn at least two (2) times the minimum wage.

124. Defendants' company-wide policy and/or practice of passing on their operating costs to Plaintiff and class members violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and other class members for necessary business-related expenses and costs.

125. Plaintiff and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

NINTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

126. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

127. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 246, 516, 1182.12, 6401, and 6403.

128. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other aggrieved employees with all required overtime pay, as alleged herein;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;

- (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the applicable IWC wage order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as alleged herein;
- (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination, as alleged herein;
- (h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (i) Violation of Labor Code section 222.5 for failure to compensate Plaintiff and other aggrieved employees for mandatory physical examinations and/or drug testing as set forth below;
- (j) Violation of Labor Code section 246 for failure to provide written notice of paid sick leave available, or paid time off, as set forth below;
- (k) Violation of Labor Code section 1198 for failure to maintain, for Plaintiff and other aggrieved employees, a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed, and to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort, as set forth below;

1 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
2 and other aggrieved employees for all business expenses necessarily
3 incurred, as alleged herein; and

4 (m) Violation of Labor Code sections 6401 and 6403 for failure to provide
5 safety devices and safeguards, such as personal protective equipment, to
6 Plaintiff and other aggrieved employees, as set forth below.

7 129. At all relevant times herein, California Labor Code section 222.5 requires
8 employers to pay for the costs an employee incurs for obtaining any medical or physical
9 examination taken.

10 130. At all times relevant herein, Defendants implemented, on a company-wide
11 basis, an employer-imposed requirement that Plaintiff and/or other aggrieved employees
12 undergo a mandatory physical examination and/or drug test, but required them to do so at their
13 own expense. As stated, Defendants had a company-wide policy requiring that all employees,
14 including Plaintiff and other aggrieved employees, travel to a specified medical facility using
15 their own personal vehicles to undergo physical examinations and/or drug testing. At all
16 times, Defendants were in control of scheduling the date and time for the examinations and/or
17 testing, selecting the provider/facility where the examinations and/or testing were to take
18 place, and determining the scope of the examinations and/or testing.

19 131. During the relevant time period, Plaintiff was instructed by Defendants to travel
20 to a medical facility and obtain a drug test and physical examination. Plaintiff followed
21 Defendants' instructions, traveled to the facility Defendants selected, and underwent the
22 testing. Plaintiff was required to drive for approximately 50 minutes roundtrip to and from a
23 medical facility selected by Defendants using her own vehicle, and spent 5 hours waiting at
24 the medical facility and undergoing the requisite testing.

25 132. However, Defendants did not compensate Plaintiff and other aggrieved
26 employees for the time they spent traveling to and from their drug tests and/or physical
27 examinations, or for the time they spent undergoing the testing and/or examinations, or
28 reimburse them for the travel expenses they incurred getting to and from the medical facilities.

1 Defendants' policy and/or practice of not paying for all costs Plaintiff and other aggrieved
2 employees incurred obtaining mandatory drug tests and/or physical examinations violates
3 California Labor Code section 222.5. Plaintiff and other aggrieved employees are therefore
4 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

5 133. California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to
6 provide employees who have worked in California for 30 or more days from the
7 commencement of employment with paid sick days, to be accrued at least one hour for every
8 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must
9 provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or
10 paid time off) in each year of the employee's employment. Codified at California Labor Code
11 sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, section 246(i) provides that an
12 employer must provide an employee with written notice that sets forth the amount of paid sick
13 leave available, or paid time off that an employer provides in lieu of sick leave, for use on
14 either the employee's itemized wage statement or in a separate written statement provided on
15 the designated pay date with the employee's wages. The penalties described in this article for
16 a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226.

17 134. During the relevant time period, Defendants failed, on a company-wide basis,
18 to provide Plaintiff and other aggrieved employees written notice on wage statements and/or
19 other separate written statements that listed the requisite information set forth in Labor Code
20 section 246(i). Defendants' ongoing and systematic failure to provide written notice of sick
21 leave benefits to Plaintiff and other aggrieved employees violates California Labor Code
22 section 246(i). Plaintiff and other aggrieved employees are therefore entitled to recover civil
23 penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

24 135. California Labor Code section 1198 dictates that no employer may employ an
25 employee under conditions of labor that are prohibited by the applicable IWC wage order.
26 California Labor Code section 1198 further requires that ". . . the standard conditions of labor
27 fixed by the commission shall be the . . . standard conditions of labor for employees. The
28 employment of any employee . . . under conditions of labor prohibited by the order is

1 unlawful.”

2 136. California Code of Regulations, Title 8, sections 11010(15)(A) and (B) provide
3 that “[t]he temperature maintained in each work area shall provide reasonable comfort
4 consistent with industry-wide standards for the nature of the process and the work
5 performed. . . . If excessive heat or humidity is created by the work process, the employer
6 shall take all feasible means to reduce such excessive heat or humidity to a degree providing
7 reasonable comfort.” California law requires an employer to endeavor to provide a safe and
8 healthy workplace (Cal. Code Regs., tit. 8, § 3203). Moreover, California Labor Code section
9 6720 required the California Division of Occupational Safety and Health (“OSHA”) to
10 propose an indoor heat illness standard by January 1, 2019; OSHA’s draft standard, as of
11 April 22, 2019, applies its proposed regulations to “all indoor work areas where the
12 temperature equals or exceeds 82 degrees Fahrenheit when employees are present.”

13 137. Upon information and belief, Defendants violated California Labor Code
14 section 1198 and California Code of Regulations, Title 8, section 11010(15), because
15 Defendants failed to maintain a temperature in work areas that provided reasonable comfort
16 consistent with industry-wide standards for the nature of the process and the work performed
17 and failed to take all feasible means to reduce excessive heat or humidity to a degree
18 providing reasonable comfort.

19 138. During the relevant time period, Plaintiff and other aggrieved employees were
20 subjected to excessive heat and or humidity resulting in temperatures equaling or exceeding
21 82 degrees Fahrenheit. Defendants failed to provide Plaintiff and other aggrieved employees
22 with reasonable comfort by maintaining the indoor temperature within the range of industry
23 standards by providing adequate air conditioning, in violation of California Labor Code
24 section 1198 and IWC Wage Order 1-2001, Section 15. For example, Plaintiff and other
25 aggrieved employees who were present on Defendants’ sites on weekends were not provided
26 air conditioning and, even on weekdays, the air conditioning system was often inconsistent as
27 Defendants only utilized mobile coolers at their worksites. Plaintiff experienced a heat stroke
28 on at least one instance from these improper work conditions.

139. Accordingly, Defendants failed to maintain, in their work areas, a temperature providing reasonable comfort for their employees, including Plaintiff and other aggrieved employees, in violation of California Labor Code section 1198. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties, pursuant to Labor Code sections 2699(a), (f), and (g).

140. At all times herein set forth, California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must to everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

141. Defendants, on a company-wide basis, failed to provide Plaintiff and other aggrieved employees with safety devices and safeguards such as protective gloves, face masks, and/or steel-toed boots, to keep them safe in the workplace. Despite the fact that Defendants required employees to wear certain personal protective equipment, including protective gloves, face masks to wear while machines were being cleaned, and steel-toed boots, Defendants failed to provide such reasonably necessary equipment to Plaintiff and other aggrieved employees to keep them safe. For example, Defendants only provided a limited number of protective gloves and face masks on a first-come, first-serve basis; when this supply ran out, Plaintiff and other aggrieved employees simply would not have gloves or masks to wear during their shifts.

142. Defendants' failure to provide Plaintiff and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

TENTH CAUSE OF ACTION

**Violation of California Business & Professions Code §§ 17200, *et seq.* –
Unlawful Business Practices
(Against all Defendants)**

143. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

144. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

145. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants’ unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

146. Defendants’ activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

147. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants’ policies and practices have violated state law in at least the following respects:

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198 and the applicable IWC Order, as alleged herein;
- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- (c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a),

516, 1198, and the applicable IWC Order, as alleged herein;

- (d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- (e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), 1198, and the applicable IWC Order, as alleged herein;
- (f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein;
- (g) Failing to pay Plaintiff and class members the costs of mandatory physical examinations and/or drug testing in violation of California Labor Code section 222.5, as set forth below;
- (h) Failing to provide written notice of paid sick leave or paid time off available to Plaintiff and class members in violation of California Labor Code section 246(i), as set forth below;
- (i) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein; and
- (j) Failing to provide Plaintiff and class members with safety devices and safeguards, such as personal protective equipment, in violation of California Labor Code sections 6401 and 6403, as set forth below.

148. At all relevant times herein, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any medical or physical examination taken.

149. At all times relevant herein, Defendants implemented, on a company-wide basis, an employer-imposed requirement that Plaintiff and class members undergo a

1 mandatory physical examination and/or drug test, but required them to do so at their own
2 expense. As stated, Defendants had a company-wide policy requiring that all employees,
3 including Plaintiff and class members, travel to a specified medical facility using their own
4 personal vehicles to undergo physical examinations and/or drug testing. At all times,
5 Defendants were in control of scheduling the date and time for the examinations and/or
6 testing, selecting the provider/facility where the examinations and/or testing were to take
7 place, and determining the scope of the examinations and/or testing.

8 150. During the relevant time period, Plaintiff was instructed by Defendants to travel
9 to a medical facility and obtain a drug test and physical examination. Plaintiff followed
10 Defendants' instructions, traveled to the facility Defendants selected, and underwent the
11 testing. Plaintiff was required to drive for approximately 50 minutes roundtrip to and from a
12 medical facility selected by Defendants using her own vehicle, and spent 5 hours waiting at
13 the medical facility and undergoing the requisite testing.

14 151. However, Defendants did not compensate Plaintiff and class members for the
15 time they spent traveling to and from their drug tests and/or physical examinations, or for the
16 time they spent undergoing the testing and/or examinations, or reimburse them for the travel
17 expenses they incurred getting to and from the medical facilities. Defendants' policy and/or
18 not paying for all costs Plaintiff and class members incurred obtaining mandatory physical
19 examinations and/or drug testing is in violation of California Labor Code section 222.5.

20 152. California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to
21 provide employees who have worked in California for 30 or more days from the
22 commencement of employment with paid sick days, to be accrued at least one hour for every
23 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick
24 leave (or equivalent paid leave or paid time off) in each year of the employee's employment.
25 Codified at California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249,
26 section 246(i) provides that an employer must provide an employee with written notice that
27 sets forth the amount of paid sick leave available, or paid time off that an employer provides
28 in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate

1 written statement provided on the designated pay date with the employee's wages. The
2 penalties described in this article for a violation of this subdivision shall be in lieu of the
3 penalties for a violation of Section 226.

4 153. During the relevant time period, Defendants have failed, on a company-wide
5 basis, to provide Plaintiff and class members written notice on wage statements and/or other
6 separate written statements that listed the requisite information set forth in Labor Code section
7 246(i). Defendants' ongoing and systematic failure to provide written notice of sick leave
8 benefits to Plaintiff and class members violates California Labor Code section 246(i).

9 154. At all relevant times herein, California Labor Code section 6401 provides that
10 employers must furnish and use safety devices and safeguards, and adopt and use practices,
11 means, methods, operations, and processes which are reasonably adequate to render the
12 employment and place of employment safe and healthy. California Labor Code Section 6401
13 further provides that an employer must do everything reasonably necessary to protect the life,
14 safety, and health of its employees. California Labor Code section 6403(a) requires that
15 employers provide and use safety devices and safeguards reasonably adequate to render the
16 employment and place of employment safe.

17 155. Defendants, on a company-wide basis, failed to provide Plaintiff and class
18 members with safety devices and safeguards such as protective gloves, face masks, and/or
19 steel-toed boots, to keep them safe in the workplace. Despite the fact that Defendants
20 required employees to wear certain personal protective equipment, including protective
21 gloves, face masks to wear while machines were being cleaned, and steel-toed boots,
22 Defendants failed to provide such reasonably necessary equipment to Plaintiff and class
23 members to keep them safe. For example, Defendants only provided a limited number of
24 protective gloves and face masks on a first-come, first-serve basis; when this supply ran out,
25 Plaintiff and class members simply would not have gloves or masks to wear during their
26 shifts. Thus, Defendants' failure to provide Plaintiff and class members with safety devices
27 and safeguards for the workplace violates Labor Code sections 6401 and 6403.

28 156. As a result of the violations of California law herein described, Defendants

1 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
2 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
3 herein.

4 157. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
5 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
6 Defendants during a period that commences four years prior to the filing of this complaint; a
7 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
8 class members; and an award of attorneys' fees pursuant to California Code of Civil
9 Procedure section 1021.5 and other applicable laws; and an award of costs.

10 **ELEVENTH CAUSE OF ACTION**

11 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

12 **Unfair Business Practices**

13 **(Against all Defendants)**

14 158. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
15 and every allegation set forth above.

16 159. Defendants are "persons" as defined by California Business & Professions
17 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
18 and/or associations.

19 160. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
20 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
21 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
22 seeks to enforce important rights affecting the public interest within the meaning of Code of
23 Civil Procedure section 1021.5.

24 161. Defendants' activities, namely Defendants' company-wide practice and/or
25 policy of not paying Plaintiff and class members all meal and rest period premium wages due
26 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
27 compensation guarantee and enhanced enforcement implemented by section 226.7. The
28 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to

1 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
2 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
3 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
4 thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
5 unfair business practice in violation of California Business & Professions Code sections
6 17200, *et seq.* (Id.)

7 162. A violation of California Business & Professions Code sections 17200, *et seq.*
8 may be predicated on any unfair business practice. In the instant case, Defendants' policies
9 and practices have violated the spirit of California's meal and rest period laws and constitute
10 acts against the public policy behind these laws.

11 163. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
12 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
13 benefits implemented by section 226.7 withheld and retained by Defendants during a period
14 that commences four years prior to the filing of this complaint; a permanent injunction
15 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
16 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
17 Procedure section 1021.5 and other applicable laws; and an award of costs.

18 **REQUEST FOR JURY TRIAL**

19 Plaintiff requests a trial by jury.

20 **PRAYER FOR RELIEF**

21 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
22 against Defendants, jointly and severally, as follows:

23 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
24 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
25 reserves the right to amend his prayer for relief to seek a different amount.

26 **Class Certification**

27 2. That this case be certified as a class action;

28 3. That Plaintiff be appointed as the representative of the Class and Subclass;

1 4. That counsel for Plaintiff be appointed as class counsel.

2 **As to the First Cause of Action**

3 5. That the Court declare, adjudge, and decree that Defendants violated California
4 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
5 pay all overtime wages due to Plaintiff and class members;

6 6. For general unpaid wages at overtime wage rates and such general and special
7 damages as may be appropriate;

8 7. For pre-judgment interest on any unpaid overtime compensation commencing
9 from the date such amounts were due, or as otherwise provided by law;

10 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
11 California Labor Code section 1194(a); and

12 9. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 //

15 **As to the Second Cause of Action**

16 10. That the Court declare, adjudge and decree that Defendants violated California
17 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
18 minimum wages to Plaintiff and class members;

19 11. For general unpaid wages and such general and special damages as may be
20 appropriate;

21 12. For pre-judgment interest on any unpaid compensation from the date such
22 amounts were due, or as otherwise provided by law;

23 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
24 California Labor Code section 1194(a);

25 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

26 15. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 **As to the Third Cause of Action**

1 16. That the Court declare, adjudge, and decree that Defendants violated California
2 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
3 willfully failing to provide all meal periods to Plaintiff and class members;

4 17. That the Court make an award to the Plaintiff and class members of one (1)
5 hour of pay at each employee's regular rate of pay for each workday that a meal period was
6 not provided;

7 18. For all actual, consequential, and incidental losses and damages, according to
8 proof;

9 19. For premiums pursuant to California Labor Code section 226.7(b);

10 20. For pre-judgment interest on any unpaid meal period premiums from the date
11 such amounts were due, or as otherwise provided by law;

12 21. For attorneys' fees pursuant to California Code of Civil Procedure section
13 1021.5, or as otherwise provided by law; and

14 22. For such other and further relief as the Court may deem equitable and
15 appropriate.

16 **As to the Fourth Cause of Action**

17 23. That the Court declare, adjudge and decree that Defendants violated California
18 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully
19 failing to authorize and permit Plaintiff and class members to take all rest periods;

20 24. That the Court make an award to the Plaintiff and class members of one (1) hour
21 of pay at each employee's regular rate of pay for each workday that a rest period was not
22 authorized and permitted;

23 25. For all actual, consequential, and incidental losses and damages, according to
24 proof;

25 26. For premiums pursuant to California Labor Code section 226.7(b);

26 27. For pre-judgment interest on any unpaid rest period premiums from the date
27 such amounts were due, or as otherwise provided by law;

28 28. For attorneys' fees pursuant to California Code of Civil Procedure section

1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, and/or meal and rest period premiums owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section

1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages, minimum wages, and/or meal and rest period premiums during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

47. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical examinations); 246 (by failing to provide written notice of paid sick leave or paid time off available); 1198 (by failing to maintain a temperature in work areas that provide reasonable comfort); 2802 (by failing to reimburse business expenses); and 6401 and 6403 (by failing to provide safety devices and safeguards);

55. For civil penalties pursuant to California Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403;

57. For pre-judgment and post-judgment interest as provided by law; and

58. For such other and further relief as the Court may deem equitable and

1 appropriate.

2 **As to the Tenth Cause of Action**

3 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
4 to provide Plaintiff and class members all overtime wages due to them, failing to provide
5 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
6 class members all meal periods, failing to authorize and permit Plaintiff and class members to
7 take all rest periods, failing to provide Plaintiff and class members accurate and complete
8 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
9 failing timely to pay Plaintiff and class members all earned wages during employment, failing
10 to reimburse Plaintiff and class members for the costs of mandatory drug testing and/or
11 physical examinations, failing to provide Plaintiff and class members with written notice of
12 paid sick leave or paid time off available, failing to reimburse Plaintiff and class members for
13 business-related expenses, and failing to provide Plaintiff and class members with safety
14 devices and safeguards, constitutes an unlawful business practice in violation of California
15 Business and Professions Code sections 17200, *et seq.*;

16 60. For restitution of unpaid wages to Plaintiff and all class members and
17 prejudgment interest from the day such amounts were due and payable;

18 61. For the appointment of a receiver to receive, manage and distribute any and all
19 funds disgorged from Defendants and determined to have been wrongfully acquired by
20 Defendants as a result of violations of California Business & Professions Code sections 17200
21 *et seq.*;

22 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
23 California Code of Civil Procedure section 1021.5; and

24 63. For such other and further relief as the Court may deem equitable and
25 appropriate.

26 **As to the Eleventh Cause of Action**

27 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
28 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes

1 an unfair business practice in violation of California Business and Professions Code sections
2 17200, *et seq.*;

3 65. For restitution of the statutory benefits under section 226.7 unfairly withheld
4 from Plaintiff and class members and prejudgment interest from the day such amounts were
5 due and payable;

6 66. For the appointment of a receiver to receive, manage and distribute any and all
7 funds disgorged from Defendants and determined to have been wrongfully acquired by
8 Defendants as a result of violations of California Business & Professions Code sections 17200
9 *et seq.*;

10 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
11 California Code of Civil Procedure section 1021.5;

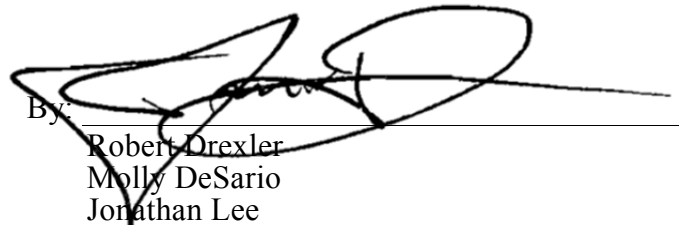
12 68. For pre-judgment and post-judgment interest as provided by law; and

13 69. For such other and further relief as the Court may deem equitable and
14 appropriate.

15
16 Dated: October 2, 2020

Respectfully submitted,

Capstone Law APC

17
18
19 By: 
20 Robert Drexler
21 Molly DeSario
Jonathan Lee

22 Attorneys for Plaintiff Suavecita Bernal
23
24
25
26
27
28

Exhibit 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

July 10, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Suavecita Bernal v. Graham Packaging PET Technologies Inc., et al.*

Dear PAGA Administrator:

This office represents Suavecita Bernal in connection with her claims under the California Labor Code. Ms. Bernal was an employee of GRAHAM PACKAGING PET TECHNOLOGIES INC.; GRAHAM PACKAGING COMPANY, L.P.; GRAHAM PACKAGING COMPANY, INC.; and/or GEC PACKAGING TECHNOLOGIES LLC. For the purpose of this letter, Ms. Bernal collectively refers to these entities as "GPPT."

The employers may be contacted directly at the addresses below:

GRAHAM PACKAGING PET
TECHNOLOGIES INC.
700 INDIAN SPRINGS DRIVE, SUITE 100
LANCASTER PA 17601

GRAHAM PACKAGING COMPANY, L.P.
700 INDIAN SPRINGS DR STE 100
LANCASTER PA 17601

GRAHAM PACKAGING COMPANY, INC.
700 INDIAN SPRINGS DRIVE, SUITE 100
LANCASTER PA 17601

GEC PACKAGING TECHNOLOGIES LLC
700 INDIAN SPRINGS DRIVE, SUITE 100
LANCASTER PA 17601

Ms. Bernal intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Bernal seeks relief on behalf of herself, the State of California, and other persons who are or were employed by GPPT as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

GPPT employed Ms. Bernal as an hourly paid, non-exempt employee from approximately August to October 2019. Ms. Bernal worked for GPPT as a Packaging Specialist at its location in Modesto,

California. During her employment, Ms. Bernal typically worked eight (8) hours or more per day, and five (5) days per week. At the time Ms. Bernal's employment with GPPT ended, she earned approximately \$15.47 per hour. Her job duties included, without limitation, operating heavy machinery, handling defective packaging, assembling and stacking packages, cleaning and maintaining machines, and logging and reporting containers.

GPPT committed one or more of the following Labor Code violations against Ms. Bernal, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

GPPT's Company-Wide and Uniform Payroll and HR Practices

GRAHAM PACKAGING PET TECHNOLOGIES INC. and GRAHAM PACKAGING COMPANY, INC. are Delaware corporations, while GRAHAM PACKAGING COMPANY, L.P. and GEC PACKAGING TECHNOLOGIES LLC are a Delaware limited partnership and a Delaware limited liability company, respectively. GPPT is a global manufacturer of customizable packaging solutions and operates several manufacturing plants in California. Upon information and belief, GPPT maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Lancaster, Pennsylvania, for all non-exempt, hourly paid employees working for GPPT in California, including Ms. Bernal and other aggrieved employees. At all relevant times, GPPT issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Bernal and other aggrieved employees, regardless of its location or position.

Upon information and belief, GPPT maintains a centralized Payroll department at its corporate headquarters in Lancaster, Pennsylvania, which processes payroll for all non-exempt, hourly paid employees working for GPPT in California, including Ms. Bernal and other aggrieved employees. Further, GPPT issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Bernal and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, GPPT utilized the same methods and formulas when calculating wages due to Ms. Bernal and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of

¹ These facts, theories, and claims are based on Ms. Bernal's experience and counsel's review of those records currently available relating to Ms. Bernal's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Ms. Bernal reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

GPPT willfully failed to pay all overtime wages owed to Ms. Bernal and other aggrieved employees. During the relevant time period, Ms. Bernal and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, GPPT had, and continues to have, a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in their timekeeping system to the nearest tenth (0.1) of an hour. GPPT's rounding policy resulted in the failure to compensate Ms. Bernal and other aggrieved employees fully for all hours worked, causing Ms. Bernal and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. GPPT's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Ms. Bernal and other aggrieved employees. To the extent GPPT's rounding policy has taken away time worked that was eligible for overtime, Ms. Bernal and other aggrieved employees were denied overtime pay for all hours worked.

Second, GPPT had a company-wide practice and/or policy of requiring Ms. Bernal and other aggrieved employees to perform work-related tasks while off-the-clock, but prevented them from accounting for and recording this time in the timekeeping system. For example, Ms. Bernal and other aggrieved employees were required to attend mandatory meetings lasting 5-10 minutes prior to their shifts, but were prevented from clocking in until their scheduled shift start-time, upon threat of discipline. Ms. Bernal would report to work 10 minutes prior to the start of her scheduled shift, but was not permitted clock in until her scheduled shift start-time, after the meeting was completed. Additionally, GPPT required Ms. Bernal and other aggrieved employees to attend off-site training sessions, such as new-hire orientations, but did not compensate them for their time spent traveling to these training sessions. For example, after clocking out, Ms. Bernal spent an hour traveling to another one of GPPT's plants to attend new-hire orientation, attend training sessions, or complete paperwork. Thus, GPPT failed to track all of this time spent working before clocking in or after clocking out, and Ms. Bernal and other aggrieved employees received no compensation for this time.

Third, during the relevant period, GPPT had, and continues to have, a company-wide policy and/or practice of understaffing its worksites while assigning heavy workloads, resulting in a failure to provide Ms. Bernal and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Ms. Bernal and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Ms. Bernal and other aggrieved employees would have their meal periods interrupted to complete such work-related tasks as responding to questions about job duties from coworkers. Furthermore, GPPT had a policy and/or practice of requiring that other aggrieved employees, such as machine operators and forklift operators, carry a company-issued radio at all times in order to respond to calls from supervisors and management, even during unpaid meal periods. GPPT's supervisors and management contacted other aggrieved employees on their radios during their meal periods. Thus, Ms. Bernal and other aggrieved employees missed and/or had meal periods interrupted in order to complete their assigned workloads. GPPT did not pay Ms. Bernal and other aggrieved employees for the time they continued to perform tasks during meal periods.

GPPT knew or should have known that as a result of these company-wide practices and/or policies, Ms. Bernal and other aggrieved employees were working before and after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Bernal and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Bernal and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, GPPT did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, GPPT paid other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, GPPT failed to incorporate all compensation, including, but not limited to, shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, GPPT failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Bernal and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

As set forth above, GPPT's company-wide policy and/or practice of rounding Ms. Bernal's and other aggrieved employees' hourly clock-in and clock-out times in their timekeeping system to the nearest tenth resulted in the failure to compensate them for all hours worked. Furthermore, as stated, Ms. Bernal and other aggrieved employees were required to perform work off-the-clock attending mandatory meetings under the direction of GPPT's management, time for which they were not paid. As also stated above, due to GPPT's policy and/or practice of understaffing while assigning heavy workloads, combined with its requirement that certain employees carry their radios at all times, Ms. Bernal and/or other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

Furthermore, GPPT maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, GPPT was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, GPPT gave Ms. Bernal strict instructions to obtain drug testing and a physical examination, and Ms. Bernal underwent the testing for the sole benefit of GPPT. Ms. Bernal followed GPPT's instructions and spent 50 minutes total traveling to

and from the medical facility designated by GPPT, and an additional five (5) hours waiting at the medical facility and undergoing the requisite testing. However, GPPT did not compensate Ms. Bernal and other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, GPPT did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, GPPT did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, GPPT regularly failed to pay at least minimum wages to Ms. Bernal and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Ms. Bernal and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest period and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, GPPT had, and continues to have, a company-wide policy and/or practice of understaffing while simultaneously assigning heavy workloads. Moreover, as stated above, GPPT's requirement that certain employees, such as machine operators and forklift operators, carry radios at all times prevented other aggrieved employees from taking compliant meal periods. As a result, Ms. Bernal and/or other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods. For example, during her employment, Ms. Bernal would have her meal periods interrupted by her coworkers to discuss work-related matters. Ms. Bernal also received late meal periods on September 12, 2019 (after 5 hours and 11 minutes of work); September 19, 2019 (after 5 hours and 50 minutes of work); and on September 20, 2019 (after 5 hours and 10 minutes of work).

In addition, during the relevant time period, GPPT did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms.

Bernal and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

As a result of GPPT's practices and/or policies, Ms. Bernal and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. GPPT knew or should have known that as a result of its policies, Ms. Bernal and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. GPPT further knew or should have known that it did not pay Ms. Bernal and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, GPPT engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Bernal and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that GPPT did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, GPPT did not pay other aggrieved employees at the correct rate of pay for premium wages because GPPT systematically failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, GPPT failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Bernal and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, GPPT regularly failed to authorize and permit Ms. Bernal and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, GPPT's policies and/or practice of understaffing and assigning heavy workloads and requirement that certain employees carry radios at all times, prevented Ms. Bernal and/or other aggrieved employees from being relieved of all duty in order to take compliant rest periods. GPPT also failed to schedule rest periods, which, coupled with GPPT's

failure to provide adequate rest period coverage, further led to Ms. Bernal and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, GPPT maintained a company-wide on-premises rest period policy, which mandated that Ms. Bernal and other aggrieved employees remain on GPPT's premises during their rest periods. For example, GPPT verbally told Ms. Bernal during her onboarding/new-hire orientation that she could not leave GPPT's premises during her rest periods. Because Ms. Bernal and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, GPPT effectively maintained control over Ms. Bernal and other aggrieved employees during rest periods.

As a result, Ms. Bernal and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, throughout her employment, Ms. Bernal would miss her rest periods due to a lack of coverage.

GPPT also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that GPPT did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, GPPT did not pay other aggrieved employees at the correct rate of pay for premium wages because GPPT failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, GPPT failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Bernal and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. GPPT has not provided Ms. Bernal and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, GPPT has knowingly and intentionally provided Ms. Bernal and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, GPPT issued uniform wage statements to Ms. Bernal and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name of the legal entity

that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, GPPT violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because GPPT did not record the time Ms. Bernal and other aggrieved employees spent working off-the-clock and improperly rounded their total hours worked, GPPT did not list the correct amount of gross wages and net wages earned by Ms. Bernal and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, GPPT failed to accurately list the total number of hours worked by Ms. Bernal and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because GPPT did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, GPPT did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, GPPT also failed to list the correct amount of net wages in violation of section 226(a)(5). GPPT also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, GPPT issued uniform wage statements to Ms. Bernal and other aggrieved employees that fail to list the correct name of the legal entity of the actual employer in violation of Labor Code section 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, obtain unemployment benefits, etc. Ms. Bernal's wage statements list the entity "GRAHAM PACKAGING PET TECHNOLOGIES" at the address "700 INDIAN SPRINGS DR SUITE 100, LANCASTER, PA 17601," but, according to the California Secretary of State's website, there is no such entity by that name at that address. However, a similarly named entity, "GRAHAM PACKAGING PET TECHNOLOGIES INC." is listed on the California Secretary of State's website with the same or similar address. Adding to the confusion, GPPT issued a Wage Theft Notice to Ms. Bernal and other aggrieved employees that indicates that their employer may be a different entity, "Graham Packaging Company." *See example paystub below.*

CO. BFP	FILE	DEPT.	CLOCK	NUMBER	1
			GMDES		
				001-0015	
GRAHAM PACKAGING PET TECHNOLOGIES					
700 INDIAN SPRINGS DR SUITE 100					
LANCASTER, PA 17601					

Earnings Statement		
Period Beginning:	08/12/2019	
Period Ending:	08/18/2019	
Pay Date:	08/23/2019	

Taxable Marital Status:		SUAVECITA BERNAL
Exemptions/Allowances:		
Federal:		
CA:		

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to

list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), GPPT willfully failed to maintain accurate payroll records for Ms. Bernal and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Ms. Bernal’s and other aggrieved employees’ total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, GPPT failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Bernal and other aggrieved employees, in violation of section 1198. Furthermore, in light of GPPT’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, GPPT kept no records of meal start and end times for second meal periods.

Because GPPT failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Bernal and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Bernal and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Bernal and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon

termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, GPPT failed to pay Ms. Bernal and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Bernal and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

GPPT willfully failed to pay Ms. Bernal and other aggrieved employees who are no longer employed by GPPT all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving GPPT's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Bernal and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, GPPT implemented, on a company-wide basis, an employer-imposed requirement that Ms. Bernal and other aggrieved employees undergo a mandatory physical examination and/or drug test, upon hiring, but required them to do so at their own expense. As stated, GPPT had a company-wide policy requiring that all employees travel to a specified medical facility using their own personal vehicles to undergo physical examinations and/or drug testing. At all times, GPPT was in control of scheduling the date and time for the examination and/or testing, selecting the provider/facility where the examination and/or testing was to take place, and determining the scope of the examination and/or testing.

For example, Ms. Bernal was instructed by GPPT to travel to a medical facility and obtain a drug test and physical examination. Ms. Bernal followed GPPT's instructions, traveled to the facility GPPT selected, and underwent the testing. Ms. Bernal was required to drive for approximately 50 minutes roundtrip to and from a medical facility selected by GPPT using her own vehicle, and spent five (5) hours waiting at the medical facility and undergoing the requisite testing.

However, GPPT did not compensate Ms. Bernal and other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. GPPT's policy and/or not paying for all costs Ms. Bernal and other aggrieved employees incurred obtaining mandatory physical examinations and/or drug testing is in violation of California Labor Code section 222.5.

Ms. Bernal and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Failure to Provide Written Notice of Paid Sick Leave Benefits

California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Codified at California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages. The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226.

During the relevant time period, GPPT failed to provide Ms. Bernal and other aggrieved employees written notice on wage statements and/or other separate written statements that list the requisite information set forth in Labor Code section 246(i). GPPT's ongoing and systematic failure to provide written notice of sick leave benefits to Ms. Bernal and other aggrieved employees violates California Labor Code section 246(i).

Ms. Bernal and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 15 – Failure to Maintain Work Temperature Providing Reasonable Comfort

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, sections 11010(15)(A) and (B) provide that “[t]he temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. . . . If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.” California law requires an employer to endeavor to provide a safe and healthy workplace (Cal. Code Regs., tit. 8, § 3203). Moreover, California Labor Code section 6720 required the California Division of Occupational Safety and Health (“OSHA”) to propose an indoor heat illness standard by January 1, 2019; OSHA’s draft standard, as of April 22, 2019, applies its proposed regulations to “all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present.”

Upon information and belief, GPPT violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15), because GPPT failed to maintain a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and failed to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort.

During the relevant time period, Ms. Bernal and other aggrieved employees were subjected to excessive heat and or humidity resulting in temperatures equaling or exceeding 82 degrees Fahrenheit. GPPT failed to provide Ms. Bernal and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by providing adequate air conditioning, in violation of California Labor Code section 1198 and IWC Wage Order 1-2001, Section 15. For example, Ms. Bernal and other aggrieved employees who were present on GPPT’s sites on weekends were not provided air conditioning and, even on weekdays, the air conditioning system was often inconsistent as GPPT only utilized mobile coolers at its worksites. Ms. Bernal experienced a heat stroke on at least one instance from these improper work conditions. Accordingly, GPPT failed to maintain, in its work areas, a temperature providing reasonable comfort for its employees, including Ms. Bernal and other aggrieved employees, in violation of California Labor Code section 1198.

Ms. Bernal and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, GPPT had a company-wide policy of requiring Ms. Bernal and other aggrieved employees to utilize their own personal vehicles for work purposes such as driving to off-site training sessions and new-hire orientations, but failed to reimburse them for all costs of

travel, including mileage. For example, Ms. Bernal drove approximately 30 miles total traveling to another one of GPPT's plants to attend new-hire orientation, attend training sessions, and/or complete paperwork. Although GPPT required Ms. Bernal and other aggrieved employees to utilize their own vehicles to travel to and from off-site training sessions, GPPT did not reimburse them fully for all of their travel expenses.

Second, GPPT had a company-wide policy of requiring Ms. Bernal and other aggrieved employees to travel in their own personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. GPPT maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, GPPT was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. GPPT gave Ms. Bernal and other aggrieved employees strict instructions to obtain drug testing and physical examinations, and Ms. Bernal and other aggrieved employees underwent the testing and physical examinations for the sole benefit of GPPT. For example, Ms. Bernal followed GPPT's instructions, traveled for approximately 50 minutes roundtrip in her personal vehicle, and underwent GPPT's drug testing, but was not reimbursed for their mileage to and from the medical facility. Although GPPT required Ms. Bernal and other aggrieved employees to undergo drug testing, GPPT never reimbursed them for all of their travel expenses.

Third, on a company-wide basis, mandated that Ms. Bernal and other aggrieved employees purchase special safety shoes such as steel-toed boots, which they were required to wear while at work. Ms. Bernal and/or other aggrieved employees purchased steel-toed boots to wear inside GPPT's facilities, but were not reimbursed fully for these costs.

GPPT could have provided Ms. Bernal and/or other aggrieved employees with the actual tools for use on the job, such as steel-toed boots or company vehicles, or GPPT could have fully reimbursed employees for the costs of steel-toed boots, travel expenses, and mileage. Instead, GPPT passed these operating costs off onto Ms. Bernal and other aggrieved employees. At all relevant times, Ms. Bernal did not earn at least two (2) times the minimum wage.

Thus, GPPT had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Bernal and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must to everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

GPPT, on a company-wide basis, failed to provide Ms. Bernal and other aggrieved employees with safety devices and safeguards such as protective gloves, face masks, and/or steel-toed boots, to keep them safe in the workplace. Despite the fact that GPPT required employees to wear certain personal protective equipment, including protective gloves and face masks to wear while machines were being cleaned, and steel-toed boots, GPPT failed to provide such reasonably necessary equipment to Ms. Bernal and other aggrieved employees to keep them safe. For example, GPPT only provided a limited number of protective gloves and face masks on a first-come, first-serve basis; when this supply ran out, Ms. Bernal and other aggrieved employees simply would not have gloves or masks to wear during their shifts.

GPPT's failure to provide Ms. Bernal and other aggrieved employees with safety devices and safeguards, including basic personal protective equipment, for the workplace violates Labor Code sections 6401 and 6403. Ms. Bernal and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." GPPT, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Bernal's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Bernal seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Bernal, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against GPPT for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Ms. Bernal seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

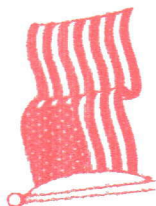
Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized, cursive script.

Mao Shiokura

Copy: GRAHAM PACKAGING PET TECHNOLOGIES INC. (via U.S. Certified Mail); GRAHAM PACKAGING COMPANY, L.P. (via U.S. Certified Mail); GRAHAM PACKAGING COMPANY, INC. (via U.S. Certified Mail); GEC PACKAGING TECHNOLOGIES LLC (via U.S. Certified Mail)

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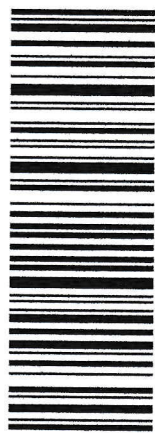
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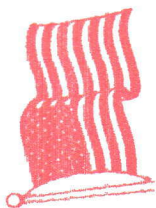
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Bernal v. Graham
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 1000
 ury Park East, Ste 1000
 es, CA 90067



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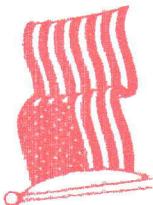
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Bernal v. Graham
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Company, Inc.

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LAW APC
Century Park East, Ste 1000
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700 INDIAN SPRINGS DRIVE, SUITE 100
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■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature ☒ D. TOTINO ☐ Agent ☐ Addressee																
1. Article Addressed to: GEC PACKAGING TECHNOLOGIES LLC 700 INDIAN SPRING DRIVE, SUITE 100 LANCASTER PA 17601	B. Received by (Printed Name) COU-R #11156 C. Date of Delivery 7-17-20 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No																
 9590 9403 0424 5163 3665 15	3. Service Type <table border="0"> <tr> <td>☐ Adult Signature</td> <td>☐ Priority Mail Express®</td> </tr> <tr> <td>☐ Adult Signature Restricted Delivery</td> <td>☐ Registered Mail™</td> </tr> <tr> <td>☒ Certified Mail®</td> <td>☐ Registered Mail Restricted Delivery</td> </tr> <tr> <td>☐ Certified Mail Restricted Delivery</td> <td>☐ Return Receipt for Merchandise</td> </tr> <tr> <td>☐ Collect on Delivery</td> <td>☐ Signature Confirmation™</td> </tr> <tr> <td>☐ Collect on Delivery Restricted Delivery</td> <td>☐ Signature Confirmation Restricted Delivery</td> </tr> <tr> <td>☐ Insured Mail</td> <td></td> </tr> <tr> <td>☐ Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>	☐ Adult Signature	☐ Priority Mail Express®	☐ Adult Signature Restricted Delivery	☐ Registered Mail™	☒ Certified Mail®	☐ Registered Mail Restricted Delivery	☐ Certified Mail Restricted Delivery	☐ Return Receipt for Merchandise	☐ Collect on Delivery	☐ Signature Confirmation™	☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery	☐ Insured Mail		☐ Insured Mail Restricted Delivery (over \$500)	
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2. Article Number (Transfer from service label) 7019 2280 0000 7398 7432	Domestic Return Receipt																

PS Form 3811, April 2015 PSN 7530-02-000-9053

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																	
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1. Article Addressed to: GRAHAM PACKAGING COMPANY, INC. 700 INDIAN SPRINGS DRIVE, SUITE 100 LANCASTER PA 17601	B. Received by (Printed Name) <i>COU-19 DG #11</i>	C. Date of Delivery <i>7-17-20</i>																
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