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BRANDON E. RILEY, CLERK

BY TRUDY L. HALEY
DEPUTY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN JOAQUIN COUNTY**
10 **(UNLIMITED JURISDICTION)**

12 DANA LIPKEN,

13 PLAINTIFF,

14 V.

15 REYNOLDS PACKING CO., A
16 CALIFORNIA CORPORATION, AND DOES 1
THROUGH 10,

17 DEFENDANTS.

) CASE NO. STK-CV-UWT-2020-0005673

) **FIRST AMENDED COMPLAINT**

-) 1. Failure to Pay Accrued and Unused
) Vacation Wages in Violation of
) Labor Code § 227.3
) 2. Failure to Timely Pay Final Wages
) in Violation of Labor Code §§ 201-
) 203
) 3. Wrongful Termination
) 4. Failure to Provide Compliant Wage
) Statements
) 5. Violation of the Private Attorneys
) General Act Relating To
) Noncompliant Wage Statements

) **JURY TRIAL DEMANDED**
)

FIRST AMENDED COMPLAINT

FILE BY FAX

1 Plaintiff, Dana Lipken, makes the following allegations against Defendant,
2 Reynolds Packing Co., and Does 1 through 10.

3 **I. NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff DANA LIPKEN (“PLAINTIFF”) brings this action against Defendant
5 REYNOLDS PACKING CO. and Does 1 through 10 (“DEFENDANTS”) for failing to
6 pay vacation wages in violation of Labor Code § 227.3, failing to timely pay final wages
7 in violation of Labor Code §§ 201-203, wrongful termination in violation of public
8 policy, failing to provide compliant wage statements and violation of the Private
9 Attorneys General Act relating to noncompliant wage statements. PLAINTIFF seeks
10 general, special and punitive damages, statutory penalties and civil penalties.

11 **II. PARTIES**

12 2. PLAINTIFF Dana Lipken is and at all relevant times was a resident of Elk Grove,
13 California. PLAINTIFF was employed by Reynolds Packing Co. from in or about
14 August, 2018 until March, 2020. Plaintiff is an “aggrieved employee” under the Private
15 Attorneys General Act because he was employed by an alleged violator (Reynolds
16 Packing Co.) and suffered one or more Labor Code violations.

17 3. PLAINTIFF is informed and believes that DEFENDANT Reynolds Packing Co.
18 (“REYNOLDS”) is a California corporation with its principal place of business in Lodi,
19 California. REYNOLDS does business as M&R Company. DEFENDANTS were the
20 employer of PLAINTIFF.

21 4. The true names and capacities of the DEFENDANTS named as DOES 1 through
22 10, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this
23 Complaint, setting forth the true names and capacities of these fictitious DEFENDANTS
24 when they are ascertained. PLAINTIFF is informed and believes and thereon alleges that
25 each DEFENDANT, directly or indirectly, or through agents or other persons, denied
26 PLAINTIFF employment and engaged in wage and hour violations alleged herein.
27 PLAINTIFF is informed and believes and thereon alleges that, at all relevant times, each
28 DEFENDANT was the principal, agent, partner, joint venturer, officer, director,

controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest, alter ego, and/or predecessor in interest of some or all of the other DEFENDANTS, and was engaged with some or all of the other DEFENDANTS in a joint enterprise for profit, and bore such other relationships to some or all of the other DEFENDANTS so as to be liable for their conduct with respect to the matters alleged below. PLAINTIFF is informed and believes and thereon alleges that each DEFENDANT acted pursuant to and within the scope of the relationships alleged above, that each DEFENDANT knew or should have known about, and authorized, ratified, adopted, approved, controlled, and aided and abetted the conduct of all other DEFENDANTS.

III. JURISDICTION AND VENUE

5. DEFENDANTS are subject to the Court's personal jurisdiction and have minimal contacts with California and this county. DEFENDANT Reynolds Packing Co.'s principal place of business is located in Lodi, California and it conducts business throughout California, and within this county. In addition, venue is proper in this Court under Code of Civil Procedure 395 et seq. because on information and belief, a substantial number of events, injuries, obligations and violations accrued or occurred in this county.

IV. FACTUAL ALLEGATIONS

6. PLAINTIFF was hired by DEFENDANTS in August, 2018. Although he was originally hired as a Controller, PLAINTIFF was later promoted to Chief Financial Officer, a position he held until his employment was terminated on March 20, 2020.

7. During his employment, PLAINTIFF earned 15 vacation days per year according to his offer letter, but he did not use all accrued vacation days during his employment. PLAINTIFF estimates he did not use approximately 10 accrued vacation days when his employment was terminated. Labor Code § 227.3 provides that when an employee is terminated without having taken his vested vacation time, all vested vacation shall be paid to him as wages at his final rate of pay. DEFENDANTS failed to pay PLAINTIFF as wages at this final rate of pay all vested vacation time when his employment was

1 terminated.

2 8. Labor Code § 201 provides that if an employer discharges an employee, all earned
3 and unpaid wages must be paid on the termination date. Under Labor Code § 203, if an
4 employer willfully fails to timely pay final wages, the employee's wages shall continue
5 as a penalty from the due date thereof until the wages are paid, up to 30 days. Because
6 DEFENDANTS willfully did not pay all accrued and unused vacation pay on March 20,
7 2020, which still has not been paid, DEFENDANTS owe PLAINTIFF his wages for 30
8 days as a penalty.

9 9. On March 19, 2020, PLAINTIFF informed Donna Reynolds, Vice President of
10 REYNOLDS, that the State of California ordered everyone to shelter-in-place due to the
11 coronavirus pandemic, including him. On March 20, 2020, PLAINTIFF did not report to
12 work at REYNOLDS due to the shelter-in-place order. That same day, Ms. Reynolds,
13 called PLAINTIFF to inform him that his employment was terminated. Although Ms.
14 Reynolds informed PLAINTIFF the termination was due to performance issues,
15 PLAINTIFF had never been disciplined or counseled regarding poor performance prior to
16 his discharge. On information and belief, the true reason for the discharge was because
17 PLAINTIFF refused to participate in activities (i.e., show up to work) that would result in
18 a violation of California law, rules or regulations, which is a violation of Labor Code §
19 1102.5. PLAINTIFF is not only entitled to the \$10,000 penalty under Labor Code §
20 1102.5, he is entitled to all damages relating to the wrongful termination.

21 10. During his employment, PLAINTIFF received wage statements from
22 DEFENDANTS that did not comply with Labor Code § 226. Among other things,
23 PLAINTIFF received wage statements that contained his full social security number. On
24 information and belief, other employees received wage statements containing their entire
25 social security numbers.

26 11. PLAINTIFF exhausted his administrative remedies and notice requirements
27 by the online filing of a letter with the LWDA on or about July 7, 2020, which sets forth
28 alleged violations of the Labor Code including, but not limited to, violations of Labor

Code § 226. PLAINTIFF also paid the required \$75 filing fee to the LWDA on the same date pursuant to Labor Code § 2699.3(a)(1)(B). Further, the letter was served on DEFENDANTS via certified mail on the same date. The LWDA did not respond within the 65-day statutory period for the LWDA to respond under Labor Code § 2699.3(a)(2)(A). Thus, PLAINTIFF exhausted his administrative remedies and notice requirements under the Private Attorney General Act and is authorized to pursue this representative action against DEFENDANTS pursuant to Labor Code § 2699.3.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION Failure to Pay Vacation Wages (Violation of Government Code § 227.3 et seq.)

12. PLAINTIFF realleges and incorporates the foregoing paragraphs as though fully set forth herein.

13. Labor Code § 227.3 provides that whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.

14. According to the offer letter provided by DEFENDANTS to PLAINTIFF, PLAINTIFF was entitled to 15 paid vacation days per year. PLAINTIFF did not use all earned vacation days during his employment. PLAINTIFF estimates he had 10 unused vacation days when his employment was terminated in March, 2020, which was never paid to him at his final rate of pay by DEFENDANTS.

15. On information and belief, as a direct result, PLAINTIFF has suffered and continues to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel

1 DEFENDANTS to fully perform their obligations under the Labor Code, all to his
2 damage in amounts according to proof at trial. PLAINTIFF seeks to recover in a civil
3 action the unpaid balance of the full amount of the unpaid vacation wages, including
4 interest thereon, reasonable attorney's fees, and costs of suit, and other remedies provided
5 under the Labor Code.

6 **SECOND CAUSE OF ACTION**
7 **FAILURE TO PAY WAGES WITHIN REQUIRED TIME**
8 **(Violations of Labor Code §§ 201 and 203)**

9 16. PLAINTIFF realleges and incorporates by this reference the foregoing
10 paragraphs as though fully set forth herein.

11 17. Labor Code § 201 requires DEFENDANTS to immediately pay any wages,
12 without abatement or reduction, to any employee who is discharged.

13 18. For a willful violation of Labor Code §§ 201 and/or 202, Labor Code § 203
14 causes the unpaid wages of the employee to continue as a penalty from the due date
15 thereof at the same rate until paid, but the wages shall not continue for more than 30
16 days.

17 19. On information and belief, DEFENDANTS willfully did not provide
18 PLAINTIFF, at the time of his discharge, with all wages due and owing including, but
19 not limited to, all vacation wages and other wages in violation of Labor Code § 201.
20 Consequently, pursuant to Labor Code § 203, DEFENDANTS owe PLAINTIFF and the
21 above-described waiting time penalty, all in an amount to be shown according to proof at
22 trial, which PLAINTIFF seeks on behalf of himself.

23 **THIRD CAUSE OF ACTION**
24 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

25 20. PLAINTIFF realleges and incorporates by reference the foregoing
26 paragraphs as though fully set forth herein.

27 21. Employers in California are prohibited from discharging an employee for
28 an unlawful reason or a purpose that contravenes fundamental public policy. *Tameny v.*

1 *Atlantic Richfield Co.*, 27 Cal.3d 167, 172 (1980); *Gantt v. Sentry Ins.*, 1 Cal.4th 1083,
2 1094 (1992).

3 22. Under Labor Code § 1102.5, there is a fundamental public policy that
4 prohibits an employer from retaliating against an employee who refuses to participate in
5 an activity that would result in a violation of state or federal statute, or a violation of or
6 noncompliance with a local, state or federal rule of law. In addition to other penalties and
7 damages, an employer who violates this Labor Code section is liable to the employee for
8 \$10,000.

9 23. On March 19, 2020, PLAINTIFF informed DEFENDANTS of the State of
10 California's shelter-in-place rule of law, which was imposed due to the coronavirus
11 pandemic. The next day, PLAINTIFF did not report to work at DEFENDANTS' place of
12 business, but his employment was terminated. Although DEFENDANTS told
13 PLAINTIFF his employment was terminated due to poor performance, PLAINTIFF had
14 never been disciplined or counseled regarding poor performance in the past. Thus, on
15 information and belief, the true reason for PLAINTIFF'S discharge was his unwillingness
16 to violate the State of California's shelter-in-place rule of law.

17 24. PLAINTIFF suffered damage due to the termination of his employment by
18 DEFENDANTS, including suffering general emotional distress and lost wages from his
19 discharge until present, among other things.

20 WHEREFORE, PLAINTIFF is entitled to and seeks the relief set forth in the Prayer
21 for Relief.

22 **FOURTH CAUSE OF ACTION**
23 **FAILURE TO PROVIDE COMPLIANT ITEMIZED WAGE STATEMENTS**
24 **(Violation of Labor Code § 226)**

25 **(By PLAINTIFF, on behalf of himself)**

26 25. PLAINTIFF realleges and incorporates the foregoing paragraphs as though
27 fully set forth herein.

28 26. Labor Code § 226(a) requires that employers, including DEFENDANTS, to

1 furnish its employees with each wage payment an accurate, itemized writing that shows
2 gross wages earned, total hours worked, all deductions, net wages earned, the inclusive
3 dates of the period for which the employee is paid, the name and address of the legal
4 entity that is the employer, the name of the employee and only the last four digits of his
5 or her social security number (or identification number) as required by law (not the full
6 social security number), and all applicable hourly rates in effect during the pay period
7 and the corresponding number of hours worked at each hourly rate by the employee,
8 among other things

9 27. On information and belief, DEFENDANTS knowingly and intentionally
10 failed to provide PLAINTIFF with the above-described writing required by Labor Code §
11 226 through actions alleged herein including, but not limited to, the inclusion of his full
12 social security number on the wage statements.

13 28. PLAINTIFF suffered an injury under Labor Code § 226(e)(2)(B)(iv)
14 because DEFENDANTS failed to include only the last four digits of his social security
15 number.

16 29. Labor Code § 226(e) requires DEFENDANTS to pay the greater of all
17 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation
18 occurred, and one hundred dollars (\$100.00) for each violation in subsequent pay periods,
19 plus attorney's fees and costs, which PLAINTIFF seeks on behalf of himself. The exact
20 amount of the applicable penalty is all in an amount to be shown according to proof at
21 trial.

22 **FIFTH CAUSE OF ACTION**
23 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT RELATING TO**
24 **NONCOMPLIANT WAGE STATEMENTS**

25 **(By PLAINTIFF, On Behalf of Himself and All Similarly-Situated Current and Former**
26 **California Employees of DEFENDANTS)**

27 30. PLAINTIFF realleges and incorporates by reference the foregoing
28 paragraphs as though fully set forth herein.

31. Labor Code § 226(a) requires that employers, including DEFENDANTS, to

1 furnish employees with each wage payment an accurate, itemized writing that shows
2 gross wages earned, total hours worked, all deductions, net wages earned, the inclusive
3 dates of the period for which the employee is paid, the name and address of the legal
4 entity that is the employer, the name of the employee and only the last four digits of his
5 or her social security number (or identification number) as required by law, and all
6 applicable hourly rates in effect during the pay period and the corresponding number of
7 hours worked at each hourly rate by the employee, among other things. Further,
8 employers are required to maintain wage statements for three years.

9 32. On information and belief, DEFENDANTS failed to provide PLAINTIFF
10 and other employees with the above-described writing required by Labor Code § 226
11 through actions alleged herein including, but not limited to, providing wage statements
12 that contain the full social security number of employees.

13 33. Labor Code § 2699, *et seq.* imposes upon DEFENDANTS penalties for
14 violations of Labor Code section 226, along with the other Labor Code sections.

15 34. Pursuant to Labor Code § 2699 *et seq.*, PLAINTIFF seeks to recover civil
16 penalties on behalf of himself and other current and former employees of
17 DEFENDANTS who worked in California. The exact amount of the applicable penalties
18 and wages is unknown at this time, but an amount to be shown according to proof at trial.

19 35. For bringing this action, PLAINTIFF is entitled to attorney's fees and costs
20 incurred herein under Labor Code § 2699 *et seq.*

21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFF prays for judgment and relief against
23 DEFENDANTS as follows:

24 a. General damages and special damages including, but not limited to, unpaid
25 vacation wages, lost wages and general emotional distress damages, in a sum according
26 to proof;

27 b. Punitive damages, in a sum according to proof;

28 c. Statutory penalties under Labor Code §§ 203, 226 and 1102.5;

1 d. Civil penalties on behalf of himself and other aggrieved employees under
2 California Labor Code sections 2698 et seq. pursuant to violations of Labor Code § 226,
3 among other provisions

4 e. For reasonable attorney's fees, cost of suit, and interest to the extent
5 permitted by law, including pursuant to the Labor Code;

6 f. For pre- and post-judgment interest, and

7 g. For such other relief as the Court deems just and proper.

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9 DATE: SEPTEMBER 11, 2020

WOODALL LAW OFFICES

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11 BY: 

12 KEVIN F. WOODALL
13 ATTORNEYS FOR PLAINTIFF, DANA LIPKEN
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