



LWDA # 23005

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October 16, 2015

Via Certified U.S. Mail – Return
Receipt Requested

California Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Tuttle Family Enterprises, Inc. dba Peerless Building
Maintenance Co.
21020 Superior Street
Chatsworth, California 91311

Re: Notice Pursuant to California Labor Code § 2699.3
Employee: Bertha Presuel
Employer: Tuttle Family Enterprises, Inc. dba Peerless Building Maintenance Co.

To Whom It May Concern:

This office represents Bertha Presuel (“Ms. Presuel”), who was employed by Tuttle Family Enterprises, Inc. dba Peerless Building Maintenance Co. (“Employer”). Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 5-2001, which Ms. Presuel alleges Employer violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code §§ 2699.3(a)(1) and 2699.3(c)(1) and may lead to immediate action against Employer in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer.

We are investigating a potential representative action on behalf of Employer’s current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest periods to employees in violation of Labor Code §§ 226.7 and 512 and Wage Order No. 5-2001, §§ 11-12; failure to pay one additional hour of compensation at the employee’s regular rate of pay for each work day that a meal or rest period is not provided in violation of Labor Code § 226.7 and Wage Order No. 5-2001, §§ 11(B)

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and 12(B); failure to pay employees overtime wages in violation of Labor Code §§ 510, 1194, and 1198 and Wage Order No. 5-2001, § 3; failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 1194, 1197, and 1197.1 and Wage Order No. 5-2001, § 4; failure to pay employees the unpaid balance of the full amount of minimum wage or overtime compensation, including interest, pursuant to Labor Code § 1194; failure to timely pay employees all wages due in violation of Labor Code § 204; willful failure to pay discharged or quitting employees under Labor Code §§ 201-203; failure to provide accurate itemized wage statements to employees in violation of Labor Code §§ 226, 1174, and 1174.5; failure to maintain required records of employees pursuant to Labor Code §§ 1174 and 1174.5 and Wage Order No. 5-2001, § 7; failure to indemnify employees travel expenses, expenditures, and/or losses in violation of Labor Code §§ 2802 and 300; and unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 223, and 224.

The allegations made by Ms. Presuel on behalf of herself and all other aggrieved employees in the State of California are based on the following facts and theories: rest periods were less than ten minutes, not provided or interrupted, as prescribed by California law;¹ meal periods were less than thirty minutes, late (starting after the fifth hour of work), not given at all (including second meal periods after ten hours of work), or interrupted; employees were not paid one hour's wage when they were not provided meal and rest periods; employees were not properly paid for all hours worked and they were not paid overtime compensation as required by California law; and employees were not reimbursed in full for travel expenses and other expenditures incurred while discharging their duties. Given the overtime, meal period, rest period, and reimbursement violations and Employer's failure to compensate its employees fully, as set forth above, the paychecks and itemized wage statements of employees were inaccurate and failed to comply with California law. In short, Employer's unlawful employment practices and policies have deprived Ms. Presuel and other aggrieved employees of earned wages and other compensation.

Meal Break Violations

Pursuant to Labor Code §§ 226.7 and 512 and IWC Order No. 5-2001, § 11, Employer is required to provide meal periods to its employees. Employer is required to provide a meal period to any employee who works a shift of more than five (5) hours, and a second meal period to any employee who works a shift of more than ten (10) hours. Furthermore, the Employer is required to pay one extra hour of compensation for each meal period not provided.

Additionally, if an employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have a written agreement agreeing to on duty meal periods.

¹ "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.

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Ms. Presuel and other aggrieved employees were entitled to the protections of Labor Code §§ 226.7 and 512 and IWC Wage Orders No. 5-2001, § 11. Employer did not allow its employees to take timely, uninterrupted thirty-minute meal breaks. In fact, Ms. Presuel's and other aggrieved employees' meal periods were short (less than thirty minutes), late (after 5 hours), interrupted and/or missed. Employer consistently failed to provide Ms. Presuel and other aggrieved employees their meal periods because Ms. Presuel and other employees were given too much work to be able to take their meal breaks. Finally, Ms. Presuel and other aggrieved employees were not provided second meal periods where they worked ten or more hours.

Employer further violated Labor Code §§ 226.7 and 512 and IWC Wage Order No. 5-2001 by failing to compensate Ms. Presuel and aggrieved employees one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided. Finally, Employer further violated Labor Code §§ 226.7, 510, 1194, and 1197 and IWC Wage Order No. 5-2001 by failing to compensate Ms. Presuel and other aggrieved employees for all hours worked during their meal periods.

Rest Break Violations

Employer failed to authorize and permit Ms. Presuel and other aggrieved employees to take rest periods as required under Labor Code § 226.7, and IWC Wage Order No. 5-2001, § 12. Pursuant to Labor Code § 226.7 and IWC Wage Order No. 5-2001, § 12, Employer is required to provide rest periods to its employees. Employer is required to provide a ten (10) minute rest period for every four (4) hours worked or major action thereof. Furthermore, Employer is required to pay one extra hour of compensation for each day on which a rest period is not authorized and permitted.

Ms. Presuel and other aggrieved employees were and are non-exempt employees of Employer and are entitled to the protections of Labor Code § 226.7 and IWC Wage Order No. 5-2001. Employer failed to authorize and permit rest periods. Employer consistently failed to authorize and permit Ms. Presuel and other aggrieved employees to take rest breaks because Ms. Presuel and other aggrieved employees were given too much work to perform to take rest breaks. Finally, Ms. Presuel and other aggrieved employees did not receive a third rest break when they worked ten or more hours.

Employer further violated Labor Code § 226.7 and IWC Wage Order No. 5-2001, § 12 by failing to pay Ms. Presuel and other aggrieved employees one additional hour of compensation at each employee's regular rate of pay for each workday that a rest period was not provided in accordance with Wage Order No. 5-2001.

Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510 and 1194 and IWC Wage Order No. 5-2001, § 3, Employer is required to compensate Ms. Presuel and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first

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eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Ms. Presuel and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510 and 1194 and IWC Wage Order No. 5-2001. Employer failed to compensate Ms. Presuel and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and IWC Wage Order No. 5-2001, § 3; requiring, suffering or permitting Ms. Presuel and other aggrieved employees to work off-the-clock; requiring, suffering or permitting Ms. Presuel and other aggrieved employees to work through meal periods but not compensating them for this time and failing to include this time in their hours worked; illegally and inaccurately recording time in which Ms. Presuel and other aggrieved employees worked; failing to properly maintain Ms. Presuel's and other aggrieved employees' records through falsifying hours worked; failing to provide accurate itemized statements to Ms. Presuel and other aggrieved employees for each pay period; and other methods to be discovered.

In violation of California law, Employer has refused to perform its obligations to compensate Ms. Presuel and other aggrieved employees for all wages earned and all hours worked. Employer's conduct violates Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 5-2001, § 3.

Failure to Pay Minimum Wages

Pursuant to Labor Code §§ 1194 and 1197 and IWC Wage Order No. 5-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Employer failed to pay Ms. Presuel and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Ms. Presuel and other aggrieved employees to work off-the-clock; requiring, suffering or permitting Ms. Presuel and other aggrieved employees to work through meal breaks but not compensating them for this time and failing to include this time in all hours worked; illegally and inaccurately recording time in which Ms. Presuel and other aggrieved employees worked; failing to properly maintain Ms. Presuel's and other aggrieved employees' records; failing to provide accurate itemized wage statements to Ms. Presuel and other aggrieved employees for each pay period; and other methods to be discovered.

Employers' conduct violates Labor Code §§ 1194 and 1197 and IWC Wage Order No. 5-2001, § 4.

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Failure to Timely Pay All Wages Earned

Employer failed to pay the full earned and unpaid wages due to Ms. Presuel and other aggrieved employees on their regularly scheduled payday in violation of Labor Code § 204.

Pursuant to Labor Code § 204, employers must pay employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Employers using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

Employer failed to pay Ms. Presuel and other aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. Specifically, Employer required Ms. Presuel and other aggrieved employees to work off-the-clock without compensation and required Ms. Presuel and other aggrieved employees to work through required meal breaks without compensation. Employer additionally failed to pay Ms. Presuel and other aggrieved employees the premium wages for all meal and rest periods that were missed, late, and/or interrupted.

Moreover, Employer failed to pay Ms. Presuel and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires employers to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. Employer knew that it was required to pay overtime wages, yet on many occasions failed to pay Ms. Presuel and other aggrieved employees overtime wages on any payday.

Failure to Pay All Wages Due Upon Separation

Pursuant to Labor Code § 201, 202, and 203, Employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 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.

Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) days.

Employer willfully failed to pay accrued wages and other compensation to Ms. Presuel

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and other aggrieved employees in accordance with Labor Code §§ 201 and 202. Because Employer required Ms. Presuel and other aggrieved employees to work off-the-clock without compensation and through required meal breaks without compensation and failed to pay Ms. Presuel and other aggrieved employees the premium wages for all meal and rest period that were missed, late, and/or interrupted, Employer failed, and continues to fail, to pay the full earned and unpaid wages due to Ms. Presuel and other aggrieved employees upon separation.

Failure to Maintain Required Records

Employer failed to maintain records as required under Labor Code §§ 226 and 1174 and IWC Wage Order Nos. 5-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

Specifically, Employer had knowledge it was not providing its employees with proper rest and meal breaks; nevertheless, Employer knowingly failed to include in the wage statements the extra hour for each missed meal break or rest break. As a result, Ms. Presuel and other aggrieved employees lost wages. In addition, Employer had knowledge that it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked. Employer knowingly failed to include this time worked in the wage statements. As a result, Ms. Presuel and other aggrieved employees lost wages.

Failure to Furnish Accurate Itemized Wage Statements

Employer failed to provide Ms. Presuel and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity or entities employing Ms. Presuel and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226 and IWC Wage Order No. 5-2001, § 7.

Specifically, Employer had knowledge it was not providing its employees with proper rest and meal breaks. Employer knowingly failed to include in the wage statements the extra hour for each missed meal break or rest break. As a result, Ms. Presuel and other aggrieved employees lost wages. In addition, Employer had knowledge that it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked. Employer knowingly failed to include this time worked in the wage statements. As a result, Ms. Presuel and other aggrieved employees lost wages.

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties

Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or

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her duties, or of his or her obedience to the directions of the employer. Employer failed to indemnify Ms. Presuel and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Employer, including but not limited to expenses for travel and other employment-related expenses, in violation of Labor Code § 2802.

This notice is hereby given to and made against Employer and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of Employer, or any related or alter-ego company, corporation, partnership, and/or business entity, in the State of California at any time within one year from the mailing of this letter .

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, applicable IWC wage orders, or regulations thereunder which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

Demand is hereby made that Employer shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, to pay Ms. Presuel and all other aggrieved employees back pay and compensation for the above-referenced violations. Additionally, demand is hereby made that Employer shall agree to comply with all California labor laws and ensure that its non-exempt employees are paid proper overtime compensation and given required meal and rest periods. Furthermore, the following demands are hereby made:

1. Employer shall agree to conduct a survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them about the number of rest periods and meal periods each employee missed (including but not limited to a second meal period required to be given after ten hours), and about the number of employees who were required to pay for travel expenses, or other expenditures in discharging their duties, with the investigation to be completed within 30 days.

2. Employer shall agree to pay each employee one hour of pay for every shift in which he or she was not provided one or more rest periods, as required by Labor Code § 226.7. Employer also shall agree to pay each employee one hour of pay for every shift in which he or she was not provided one or more and meal periods, as required by Labor Code § 226.7. Employer shall agree to reimburse those employees who were forced to pay for any business expenses incurred for the benefit of the company, including but not limited to travel expenses. In addition, Employer shall agree to pay a waiting time penalties, equal to thirty days of pay, to

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each former employee who was not paid all wages due as described herein.

3. Employer shall agree to pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.

4. Employer shall agree to pay all penalties arising from the violations of the Labor Code and IWC wage order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et seq.*, including but not limited to penalties under Labor Code §§ 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1199 and 2699 and Wage Order No. 5-2001, § 20.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to Matern Law Group, 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266.

Thank you for your prompt attention to this matter.

Very truly yours,

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Launa Adolph

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MATTHEW J. MATERN (SBN 159798)

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Attorneys for Plaintiff Bertha Presuel,
individually and on behalf of all others
similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

BERTHA PRESUEL, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

TUTTLE FAMILY ENTERPRISES, INC.
dba PEERLESS BUILDING
MAINTENANCE CO., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.:

CLASS ACTION

COMPLAINT:

1. Failure to Provide Meal Periods
2. Failure to Authorize and Permit Rest Periods
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Furnish Accurate Itemized Wage Statements
7. Failure to Maintain Required Records
8. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
9. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION:

10. Penalties under the Labor Code Private Attorneys General Act, as Representative Action

DEMAND FOR JURY TRIAL

1 PLAINTIFF BERTHA PRESUEL (“PLAINTIFF”), individually and on behalf of all
2 others similarly situated, hereby alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of herself and all other similarly-situated
5 current and former non-exempt employees of defendants TUTTLE FAMILY ENTERPRISES,
6 INC. dba PEERLESS BUILDING MAINTENANCE CO. (“PEERLESS BUILDING”); and DOES
7 1 through 50 inclusive (collectively, “DEFENDANTS”) in the State of California during the
8 relevant statutory period to recover, among other things, unpaid compensation arising from
9 DEFENDANTS’ failure to provide employees meal and rest periods (or compensation therefor)
10 as required under California law, unpaid overtime compensation, unpaid minimum wage, and
11 unreimbursed business expenses. Plaintiff also seeks penalties, interest, attorneys’ fees, costs and
12 expenses, and equitable, restitutionary and injunctive relief.

13 **JURISDICTION AND VENUE**

14 2. The Superior Court of the State of California has jurisdiction in this matter because
15 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do
16 business in California and regularly conduct business in California. Further, no federal question is at
17 issue because the claims are based solely on California law.

18 3. Venue is proper in this judicial district and the County of Los Angeles, California
19 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS
20 in the County of Los Angeles, DEFENDANTS maintain offices and facilities and transact
21 business in the County of Los Angeles, and because DEFENDANTS’ illegal policies and
22 practices which are the subject of this action were applied, at least in part, to PLAINTIFF and
23 other persons similarly situated in the County of Los Angeles.

24 **THE PARTIES**

25 4. PLAINTIFF is a resident of the State of California and a former employee of
26 DEFENDANTS.

27 5. PLAINTIFF brings this action on behalf of herself and the following similarly
28 situated class of individuals (“CLASS MEMBERS”): all current and former non-exempt

1 employees of DEFENDANTS in the State of California at any time within the period
2 beginning four (4) years prior to the filing of this action and ending at the time this action
3 settles or proceeds to final judgment (the "CLASS PERIOD"). PLAINTIFF reserves the right
4 to name additional class representatives.

5 6. PLAINTIFF is informed and believes, and thereon alleges, that PEERLESS
6 BUILDING is, and at all times relevant hereto was, a California corporation organized and
7 existing under the laws of the State of California. PLAINTIFF is further informed and believes,
8 and thereon alleges, that PEERLESS BUILDING is authorized to conduct business in the State of
9 California, and does conduct business in the State of California. Specifically, PEERLESS
10 BUILDING maintains offices and facilities, conducts business, and engages in illegal practices in
11 the County of Los Angeles.

12 7. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
13 PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE defendants under fictitious
14 names. PLAINTIFF is informed and believes, and thereon alleges, that each defendant
15 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
16 that PLAINTIFF and CLASS MEMBERS' injuries and damages, as alleged herein, were
17 proximately caused by the conduct of such DOE defendants. PLAINTIFF will seek leave of the
18 court to amend this Complaint to allege their true names and capacities of such DOE defendants
19 when ascertained.

20 8. At all relevant times herein, DEFENDANTS were the joint employers of
21 PLAINTIFF and CLASS MEMBERS. PLAINTIFF is informed and believes, and thereon allege,
22 that at all times material to this complaint DEFENDANTS were the alter egos, divisions,
23 affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities,
24 co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or
25 ostensible, of each other. Each defendant was completely dominated by his, her or its co-
26 defendant, and each was the alter ego of the other.

27 9. At all relevant times herein, PLAINTIFF and CLASS MEMBERS were employed
28 by DEFENDANTS under employment agreements that were partly written, partly oral, and partly

1 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of
2 them, acted pursuant to, and in furtherance of, their policies and practices of not paying
3 PLAINTIFF and CLASS MEMBERS all wages earned and due, through methods and schemes
4 which include, but are not limited to, failing to pay overtime premiums; failing to provide rest and
5 meal periods; failing to properly maintain records; failing to provide accurate itemized statements
6 for each pay period; failing to properly compensate PLAINTIFF and CLASS MEMBERS for
7 necessary expenditures; and requiring, suffering or permitting employees to work off the clock, in
8 violation of the California Labor Code and the applicable Industrial Welfare Commission
9 (“IWC”) Wage Orders.

10 10. PLAINTIFF is informed and believes, and thereon alleges, that each and every one
11 of the acts and omissions alleged herein were performed by, and/or attributable to, all
12 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
13 of, each of the other defendants, and that said acts and failures to act were within the course and
14 scope of said agency, employment and/or direction and control.

15 11. As a direct and proximate result of DEFENDANTS’ unlawful actions,
16 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings
17 in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this
18 Court.

19 CLASS ACTION ALLEGATIONS

20 12. This action is appropriately suited for a class action because:

21 a. The potential class is of a significant number. Joinder of all current and
22 former employees individually would be impracticable.

23 b. This action involves common questions of law and fact because the action
24 focuses on DEFENDANTS’ systematic course of illegal practices and policies, which are applied
25 to all non-exempt employees in violation of the Labor Code, the applicable IWC Wage Order,
26 and the Business and Professions Code which prohibits unfair business practices arising from
27 such violations.

1 c. PLAINTIFF's claims are typical of the claims of the class because
2 DEFENDANTS subjected all non-exempt employees to the same violations of the Labor Code,
3 the applicable IWC Wage Order, and the Business and Professions Code.

4 d. PLAINTIFF will fairly and adequately protect the interests of all CLASS
5 MEMBERS in order to obtain full compensation due to the CLASS MEMBERS for all services
6 rendered and hours worked.

7 **FIRST CAUSE OF ACTION**

8 **Failure to Provide Meal Periods**

9 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 5-2001 § 11]**

10 **(Against all DEFENDANTS)**

11 13. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
12 allegations in paragraphs 1 through 12.

13 14. During the CLASS PERIOD, DEFENDANTS have had, and continue to have, a
14 policy and practice of failing to provide PLAINTIFF and CLASS MEMBERS full and timely
15 meal periods as required by California Labor Code §§ 226.7 and 512 and IWC Wage Order No.
16 5-2001 § 11.

17 15. As a result of DEFENDANTS' policies and practices as alleged herein,
18 PLAINTIFF and CLASS MEMBERS have regularly been denied, and continue to be denied, the
19 opportunity to take full, uninterrupted, and timely meal periods as required under California
20 Labor Code §§ 226.7 and 512 and IWC Wage Order No. 5-2001 § 11.

21 16. DEFENDANTS violated, and continue to violate, California Labor Code § 226.7
22 and IWC Wage Order No. 5-2001 § 11 by failing to compensate PLAINTIFF and CLASS
23 MEMBERS who were not provided a meal period, in accordance with the applicable Wage
24 Order, one additional hour of compensation at each employee's regular rate of pay for each
25 workday that a meal period was not provided.

26 17. DEFENDANTS further violated, and continue to violate, California Labor Code
27 §§ 226.7, 510, 1194, and 1197 and IWC Wage Order No. 5-2001 by failing to compensate
28 PLAINTIFF and CLASS MEMBERS for all hours worked during their meal periods.

1 18. As a direct and proximate result of the aforementioned violations, PLAINTIFF and
2 CLASS MEMBERS have sustained economic damages, including but not limited to unpaid
3 wages and lost interest, in an amount according to proof at trial, and are entitled to recover
4 economic and statutory damages and penalties and other appropriate relief due to
5 DEFENDANTS' violation of the California Labor Code and IWC Wage Order No. 5-2001.

6 **SECOND CAUSE OF ACTION**

7 **Failure to Authorize and Permit Rest Periods**

8 **[Cal. Labor Code § 226.7; IWC Wage Order No. 5-2001 § 12]**

9 **(Against all DEFENDANTS)**

10 19. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
11 allegations in paragraphs 1 through 18.

12 20. During the CLASS PERIOD, DEFENDANTS have had, and continue to have, a
13 policy and practice of failing to authorize and permit PLAINTIFF and CLASS MEMBERS to
14 take rest breaks as required by California Labor Code § 226.7 and IWC Wage Order No. 5-2001 §
15 12. As a result of DEFENDANTS' policies and practices as alleged herein, PLAINTIFF and
16 CLASS MEMBERS have regularly been denied, and continue to be denied, the opportunity to
17 take full, uninterrupted, and timely rest periods as required under California Labor Code § 226.7
18 and IWC Wage Order No. 5-2001 § 12.

19 21. DEFENDANTS violated, and continue to violate, California Labor Code § 226.7
20 and IWC Wage Order No. 5-2001 § 12 by failing to pay PLAINTIFF and CLASS MEMBERS
21 who were not provided a rest period, in accordance with the applicable Wage Order, one
22 additional hour of compensation at each employee's regular rate of pay for each workday that a
23 rest period was not provided.

24 22. As a direct and proximate result of the aforementioned violations, PLAINTIFF and
25 CLASS MEMBERS have sustained economic damages, including but not limited to unpaid
26 wages and lost interest, in an amount according to proof at trial, and are entitled to recover
27 economic and statutory damages and penalties and other appropriate relief due to
28 DEFENDANTS' violation of the California Labor Code and IWC Wage Order No. 5-2001.

1 **THIRD CAUSE OF ACTION**

2 **Failure to Pay Overtime Wages**

3 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001 § 3]**

4 **(Against all DEFENDANTS)**

5 23. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
6 allegations in paragraphs 1 through 22.

7 24. Pursuant to California Labor Code §§ 510 and 1194 and IWC Wage Order No. 5-
8 2001 § 3, DEFENDANTS are required to compensate PLAINTIFF and CLASS MEMBERS for
9 all overtime at a rate of one and one-half (1 ½) times the regular rate of pay for all hours worked
10 in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8)
11 hours on the seventh consecutive workday and at a rate of twice the regular rate of pay for all
12 hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of
13 eight (8) hours on the seventh consecutive day of work in any workweek.

14 25. PLAINTIFF and CLASS MEMBERS are current and former non-exempt
15 employees entitled to the protections of California Labor Code §§ 510 and 1194 and IWC Wage
16 Order No. 5-2001. During the CLASS PERIOD, DEFENDANTS failed to compensate, and
17 continue to fail to compensate, PLAINTIFF and CLASS MEMBERS for all overtime hours
18 worked as required under the foregoing provisions of the California Labor Code and IWC Wage
19 Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double
20 the regular rate of pay as provided by California Labor Code §§ 510 and 1194 and IWC Wage
21 Order No. 5-2001 § 3; requiring, suffering or permitting PLAINTIFF and CLASS MEMBERS to
22 work off the clock; requiring, suffering or permitting PLAINTIFF and CLASS MEMBERS to
23 work through meal breaks; illegally and inaccurately recording time in which PLAINTIFF and
24 CLASS MEMBERS worked; failing to properly maintain PLAINTIFF's and CLASS
25 MEMBERS' records; failing to provide accurate itemized wage statements to PLAINTIFF for
26 each pay period; and other methods to be discovered.

27 26. In violation of California law, DEFENDANTS have knowingly and willfully
28 refused, and continue to refuse, to perform their obligations to compensate PLAINTIFF and

1 CLASS MEMBERS for all wages earned and all hours worked. As a direct and proximate result,
2 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, substantial losses
3 related to the use and enjoyment of such wages, lost interest on such wages, and expenses and
4 attorneys' fees in seeking to compel DEFENDANTS to fully perform their obligations under state
5 law, resulting in damages in amounts according to proof at time of trial and within the jurisdiction
6 of this Court.

7 27. DEFENDANTS' conduct described herein violates, and continues to violate,
8 California Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 5-2001 § 3. Therefore,
9 pursuant to California Labor Code §§ 200, 203, 226, 558, 1194 and 1197.1 and other applicable
10 provisions under the California Labor Code and IWC Wage Orders, PLAINTIFF and CLASS
11 MEMBERS are entitled to recover the unpaid balance of wages owed to them by
12 DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

13 **FOURTH CAUSE OF ACTION**

14 **Failure to Pay Minimum Wages**

15 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 5-2001 § 4]**

16 **(Against all DEFENDANTS)**

17 28. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
18 allegations in paragraphs 1 through 27.

19 29. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 5-
20 2001 § 4, payment to an employee of less than the applicable minimum wage for all hours
21 worked in a payroll period is unlawful.

22 30. During the CLASS PERIOD, DEFENDANTS failed to pay, and continue to fail to
23 pay, PLAINTIFF and CLASS MEMBERS minimum wages for all hours worked by, among other
24 things: requiring, suffering, or permitting PLAINTIFF and CLASS MEMBERS to work off the
25 clock; requiring, suffering, or permitting PLAINTIFF and CLASS MEMBERS to work through
26 meal breaks; illegally and inaccurately recording time in which PLAINTIFF and CLASS
27 MEMBERS worked; failing to properly maintain PLAINTIFF's and CLASS MEMBERS'
28 records; failing to provide accurate itemized wage statements to PLAINTIFF and CLASS

1 MEMBERS for each pay period; and other methods to be discovered.

2 31. DEFENDANTS' conduct described herein violates, and continue to violate,
3 California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 5-2001 § 4. As a proximate
4 result of the aforementioned violations, PLAINTIFF and CLASS MEMBERS have been
5 damaged in an amount according to proof at trial. Therefore, pursuant to California Labor Code
6 §§ 200, 203, 226, 558, 1194 and 1197.1 and other applicable provisions under the Labor Code
7 and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled to recover the unpaid
8 balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees,
9 expenses, and costs of suit.

10 **FIFTH CAUSE OF ACTION**

11 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

12 **[Cal. Labor Code §§ 201, 202, 203]**

13 **(Against all DEFENDANTS)**

14 32. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
15 allegations in paragraphs 1 through 31.

16 33. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are
17 required to pay all earned and unpaid wages to discharged and quitting employees.

18 34. California Labor Code § 201 mandates that if an employer discharges an
19 employee, the employee's wages accrued and unpaid at the time of discharge are due and payable
20 immediately. Pursuant to California Labor Code § 202, DEFENDANTS are required to pay all
21 accrued wages due to an employee no later than 72 hours after the employee quits his or her
22 employment, unless the employee provided 72 hours previous notice of his or her intention to
23 quit, in which case the employee is entitled to his or wages at the time of quitting.

24 35. California Labor Code § 203 provides that if an employer willfully fails to pay, in
25 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
26 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
27 compensation to the employee at the same rate for up to 30 workdays.

28 36. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay, and

1 continue to willfully fail to pay, accrued wages and other compensation to PLAINTIFF and
2 CLASS MEMBERS in accordance with California Labor Code §§ 201 and 202.

3 37. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available
4 statutory penalties, including the waiting time penalties provided in California Labor Code § 203,
5 together with interest thereon, as well as other available remedies.

6 **SIXTH CAUSE OF ACTION**

7 **Failure to Furnish Accurate Itemized Wage Statements**

8 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 5-2001 § 7]**

9 **(Against all DEFENDANTS)**

10 38. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
11 allegations in paragraphs 1 through 37.

12 39. During the CLASS PERIOD, as part of DEFENDANTS' illegal policies and
13 practices to deprive PLAINTIFF and CLASS MEMBERS of all wages earned and due,
14 DEFENDANTS knowingly and intentionally failed to maintain records as required under
15 California Labor Code §§ 226 and 1174 and IWC Wage Order No. 5-2001 § 7, including but not
16 limited to the following records: total daily hours worked by each employee; applicable rates of
17 pay; all deductions; meal periods; time records showing when each employee begins and ends
18 each work period; and accurate itemized statements.

19 40. As a proximate result of DEFENDANTS' unlawful actions and omissions,
20 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at
21 trial, and are entitled to all wages earned and due, plus interest thereon. Additionally,
22 PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties, including
23 but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5,
24 and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those
25 provided in California Labor Code § 226(e), as well as other available remedies.

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure to Maintain Required Records**

3 **[Cal. Labor Code § 226; IWC Wage Order No. 5-2001 § 7]**

4 **(Against all DEFENDANTS)**

5 41. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
6 allegations in paragraphs 1 through 40.

7 42. During the CLASS PERIOD, DEFENDANTS routinely failed to provide, and
8 continue to fail to provide, PLAINTIFF and CLASS MEMBERS with timely and accurate
9 itemized wage statements in writing showing each employee's gross wages earned, total hours
10 worked, all deductions made, net wages earned, the name and address of the legal entity or
11 entities employing PLAINTIFF and CLASS MEMBERS, and all applicable hourly rates in effect
12 during each pay period and the corresponding number of hours worked at each hourly rate, in
13 violation of California Labor Code § 226 and IWC Wage Order No. 5-2001 § 7.

14 43. During the CLASS PERIOD, PLAINTIFF and CLASS MEMBERS suffered
15 injury, and continue to suffer injury, as a result of DEFENDANTS' failure to provide timely and
16 accurate itemized wage statements, as PLAINTIFF and CLASS MEMBERS could not promptly
17 and easily determine from the wage statement alone one or more of the following: the gross
18 wages earned, the total hours worked, all deductions made, the net wages earned, the name and
19 address of the legal entity or entities employing PLAINTIFF and CLASS MEMBERS, and/or all
20 applicable hourly rates in effect during each pay period and the corresponding number of hours
21 worked at each hourly rate.

22 44. As a direct and proximate result of DEFENDANTS' unlawful actions and
23 omissions, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
24 proof at trial, and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFF
25 and CLASS MEMBERS are entitled to all available statutory penalties, including but not limited
26 to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award
27 of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in
28 California Labor Code § 226(e), as well as other available remedies.

1 **EIGHTH CAUSE OF ACTION**

2 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of**
3 **Duties**

4 **[Cal. Labor Code § 2802]**

5 **(Against all DEFENDANTS)**

6 45. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
7 allegations in paragraphs 1 through 44.

8 46. California Labor Code § 2802(a) requires an employer to indemnify an employee
9 for all necessary expenditures or losses incurred by the employee in direct consequence of the
10 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

11 47. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to
12 indemnify, and continue to knowingly and willfully fail to indemnify, PLAINTIFF and CLASS
13 MEMBERS for all business expenses and/or losses incurred in direct consequence of the
14 discharge of their duties while working under the direction of DEFENDANTS, including but not
15 limited to expenses for travel, and other employment-related expenses, in violation of California
16 Labor Code § 2802.

17 48. As a proximate result of DEFENDANTS' unlawful actions and omissions,
18 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at
19 trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to
20 California Labor Code § 2802(b). Additionally, PLAINTIFF and CLASS MEMBERS are
21 entitled to all available statutory penalties and an award of costs, expenses, and reasonable
22 attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other
23 available remedies.

24 **NINTH CAUSE OF ACTION**

25 **Unfair and Unlawful Business Practices**

26 **[Cal. Bus. & Prof. Code § 17200, et seq.]**

27 **(Against all DEFENDANTS)**

28 49. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the

1 allegations in paragraphs 1 through 48.

2 50. Each and every one of DEFENDANTS' acts and omissions in violation of the
3 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but
4 not limited to DEFENDANTS' failure and refusal to provide required meal periods,
5 DEFENDANTS' failure and refusal to authorize and permit rest periods, DEFENDANTS' failure
6 and refusal to pay overtime compensation, DEFENDANTS' failure and refusal to pay minimum
7 wages, DEFENDANTS' failure and refusal to pay all wages due to discharged and quitting
8 employees, DEFENDANTS' failure and refusal to furnish accurate itemized wage statements;
9 DEFENDANTS' failure and refusal to maintain required records, and DEFENDANTS' failure
10 and refusal to indemnify PLAINTIFF and CLASS MEMBERS for necessary expenditures and/or
11 losses incurring in discharging their duties, constitutes an unfair and unlawful business practice
12 under California Business and Professions Code § 17200, et seq.

13 51. DEFENDANTS' violations of California wage and hour laws constitute a business
14 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over
15 a significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and
16 CLASS MEMBERS.

17 52. DEFENDANTS have avoided payment of wages, overtime wages, meal period
18 premiums, rest break premiums, and other benefits as required by the California Labor Code, the
19 California Code of Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS
20 have failed to record, report, and pay the correct sums of assessment to the state authorities under
21 the California Labor Code and other applicable regulations.

22 53. As a result of DEFENDANTS' unfair and unlawful business practices,
23 DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the expense
24 of PLAINTIFF, CLASS MEMBERS, and members of the public. DEFENDANTS should be
25 made to disgorge their ill-gotten gains and to restore them to PLAINTIFF and CLASS
26 MEMBERS.

27 54. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFF and
28 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not

1 limited to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFF and
2 CLASS MEMBERS the wages and other compensation unlawfully withheld from them.
3 PLAINTIFF and CLASS MEMBERS are entitled to restitution of all monies to be disgorged
4 from DEFENDANTS in an amount according to proof at the time of trial, but within the
5 jurisdiction of this Court.

6 **TENTH CAUSE OF ACTION**

7 **Representative Action for Civil Penalties**

8 **[Cal. Labor Code §§ 2698–2699.5]**

9 **(Against all DEFENDANTS)**

10 55. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
11 allegations in paragraphs 1 through 54, with exception of the allegations in paragraph 12 and the
12 subparagraphs thereto.

13 56. PLAINTIFF is an “aggrieved employee” within the meaning of California Labor
14 Code § 2699(c), and a proper representative to bring a civil action on behalf of herself and other
15 current and former employees of DEFENDANTS pursuant to the procedures specified in
16 California Labor Code § 2699.3, because PLAINTIFF and CLASS MEMBERS were employed
17 by DEFENDANTS and the alleged violations of the California Labor Code were committed
18 against PLAINTIFF and CLASS MEMBERS.

19 57. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
20 Labor Code §§ 2698–2699.5, PLAINTIFF seeks to recover civil penalties, including but not
21 limited to penalties under California Labor Code §§ 2699, 210, 226.3, 558, 1174.5, and 1197.1
22 and IWC Wage Order No. 5-2001, § 20, from DEFENDANTS in a representative action for the
23 violations set forth above, including but not limited to violations of California Labor Code
24 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802. PLAINTIFF is
25 also entitled to an award of reasonable attorneys’ fees and costs pursuant to California Labor
26 Code § 2699(g)(1).

27 58. Pursuant to California Labor Code §§ 2699.3, on _____, 2015, PLAINTIFF
28 gave written notice by certified mail to the California Labor and Workforce Development Agency

1 (“LWDA”) and PEERLESS BUILDING of the specific provisions of the California Labor Code
2 and IWC Wage Orders alleged to have been violated, including the facts and theories to support
3 the alleged violations. More than thirty-three (33) calendar days of the postmark date of
4 PLAINTIFF’S notice letter has passed and the LWDA has not provided notice to PLAINTIFF
5 that it intends to investigate the alleged violations.

6 59. Therefore, PLAINTIFF has complied with all of the requirements set forth in
7 California Labor Code § 2699.3 to commence a representative action under PAGA.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFF, individually and on behalf of all other persons similarly
10 situated, respectfully prays for relief against DEFENDANTS, and each of them, as follows:

- 11 1. For compensatory damages in an amount to be ascertained at trial;
- 12 2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well
13 as disgorged profits from DEFENDANTS’ unfair and unlawful business practices;
- 14 3. For meal and rest period compensation pursuant to California Labor Code § 226.7
15 and IWC Wage Order No. 5-2001;
- 16 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 17 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
18 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and
19 from engaging in the unlawful business practices complained of herein;
- 20 6. For waiting time penalties pursuant to California Labor Code § 203;
- 21 7. For statutory and civil penalties according to proof, including but not limited to all
22 penalties authorized by the California Labor Code §§ 226(e) and 2699;
- 23 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor
24 Code §§ 218.6, 1194, and 2802, California Civil Code §§ 3287, 3288, and/or any other applicable
25 provision providing for pre-judgment interest;
- 26 9. For reasonable attorneys’ fees and costs pursuant to California Labor Code
27 §§ 1194, 2699, and 2802, California Civil Code § 1021.5, and any other applicable provisions
28 providing for attorneys’ fees and costs;

- 1 10. For declaratory relief;
- 2 11. For an order certifying the First, Second, Third, Fourth, Fifth, Sixth, Seventh,
- 3 Eighth, and Ninth Causes of Action as a class action;
- 4 12. For an order appointing PLAINTIFF as class representative and PLAINTIFF's
- 5 counsel as class counsel; and
- 6 13. For such further relief that the Court may deem just and proper.
- 7

8 DATED: October ____, 2015

Respectfully submitted,

9 **MATERN LAW GROUP**

10

11 By: _____

MATTHEW J. MATERN
Attorneys for Plaintiff BERTHA PRESUEL,
individually and on behalf of all others similarly
situated

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DEMAND FOR JURY TRIAL

PLAINTIFF, individually and on behalf of all others similarly situated, hereby demands a trial by jury on all issues so triable.

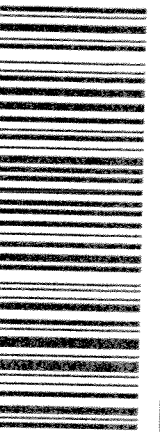
DATED: October ____, 2015

Respectfully submitted,

MATERN LAW GROUP

By:

MATTHEW J. MATERN
Attorneys for Plaintiff BERTHA PRESUEL,
individually and on behalf of all others similarly
situated



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MATERN LAW GROUP

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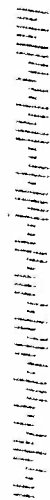
California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

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OCT 27 2015

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OAKLAND DISTRICT OFFICE

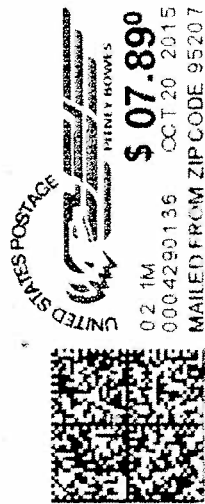
CERTIFIED MAIL



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