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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MERCED

DEREK MORRIS and FELIPE DELEON,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

FOSTER FARMS, LLC,

Defendant.

CASE NO. 21CV-00237

LAW ENFORCEMENT ACTION

Plaintiffs Derek Morris and Felipe Deleon, by and through their undersigned attorneys, hereby bring this civil law enforcement action under the California Private Attorneys General Act (“PAGA”) against Foster Farms, LLC (hereinafter “Defendant” or “Foster Farms”) and allege as follows:

I. NATURE OF THE CASE

1. This is a law enforcement action under the Private Attorneys General Act of the California Labor Code, arising from Defendant’s failure to provide and reimburse employees for the cost of personal protective equipment (“PPE”) and failure to provide COVID-19 food sector supplemental paid sick leave to its employees during the COVID-19 pandemic. It is well

1 documented that Foster Farms has declined to implement adequate health and safety procedures
2 to protect its workers from COVID-19, a highly contagious virus that has infected at least 93.2
3 million people worldwide, and killed 2 million people in approximately one year. The failure to
4 provide protective equipment and paid sick leave to the employees are two particular violations
5 exacerbating the impact of the unsafe working conditions that have continued to confront the
6 workforce since the beginning of the pandemic.

7 2. Foster Farms is the largest poultry processor in California and is based in
8 Livingston. Foster Farms runs hatcheries, ranches, feed mills, processing plants, and refrigerated
9 delivery trucks. It also operates Foster Farms Dairy, which processes and distributes milk via
10 eight facilities located throughout California.

11 3. It is critical for a company like Foster Farms to implement adequate procedures to
12 stop the spread of COVID-19 amongst essential workers. Foster Farms employs thousands of
13 individuals who must work at close distances in its facilities. Its failure to adopt necessary health
14 and safety measures to protect its workers from this virulent disease in the workplace has already
15 had a disastrous effects.¹ Multiple outbreaks have occurred at its California facilities, hundreds
16 of workers have fallen ill, some of whom have died, and its Livingston and Fresno plants are the
17 subjects of ongoing investigations by the California Department of Occupational Health and
18 Safety (“Cal/OSHA”).²

19 4. Two measures crucial to curbing the spread of COVID-19 are (1) ensuring
20 employees have access to sufficient PPE, such as masks, face shields, gloves, hand sanitizer, and
21 the like, and (2) providing paid supplemental sick leave to modest-wage earners to make
22 quarantine a financially viable option for them. Indeed, Foster Farms has not only an ethical, but
23 also a legal obligation under California Labor Code §§ 2802 and 248 to reimburse employees if
24 they are forced to bear the expense of purchasing business necessities, including PPE, up-front,
25 and, as set forth in more detail *infra*, to provide eligible employees paid supplemental COVID-

26 _____
27 ¹ See, e.g., [https://www.kqed.org/news/11851959/lawsuit-foster-farms-plant-operating-in-](https://www.kqed.org/news/11851959/lawsuit-foster-farms-plant-operating-in-naked-disregard-of-covid-19-safety-rules)
28 [naked-disregard-of-covid-19-safety-rules](https://www.kqed.org/news/11851959/lawsuit-foster-farms-plant-operating-in-naked-disregard-of-covid-19-safety-rules); [https://calmatters.org/california-](https://calmatters.org/california-divide/2020/12/covid-19-outbreak-foster-farms-fresno/)
[divide/2020/12/covid-19-outbreak-foster-farms-fresno/](https://calmatters.org/california-divide/2020/12/covid-19-outbreak-foster-farms-fresno/); [https://calmatters.org/california-](https://calmatters.org/california-divide/2020/08/foster-farms-shut-down-outbreak/)
[divide/2020/08/foster-farms-shut-down-outbreak/](https://calmatters.org/california-divide/2020/08/foster-farms-shut-down-outbreak/).

² See, e.g., *id.*

1 19 sick leave.

2 5. Plaintiffs' experiences at Foster Farms' Livingston facility during the pandemic
3 exemplify its broad pattern and practice of forcing employees to bear the expense of purchasing
4 PPE themselves, and of failing to provide eligible employees with paid supplemental COVID-19
5 sick leave. Both Plaintiff Morris and Plaintiff Deleon were forced to purchase PPE, such as
6 masks, gloves, and hand sanitizer, with no reimbursement. Both also contracted COVID-19 in
7 the summer of 2020 and were advised to quarantine, but did not receive paid supplemental sick
8 leave to which they were entitled under the California Labor Code. In Plaintiff Morris' case,
9 Foster Farms exacerbated the financial, emotional, and physical damage it had already caused
10 him by penalizing and ultimately terminating him for COVID-19-related work absences. To
11 make matters worse, Mr. Morris continues to experience lingering gastrointestinal problems and
12 migraines because of the virus.

13 6. Plaintiffs, on behalf of themselves and all other aggrieved employees, seek civil
14 penalties under the Private Attorneys General Act of 2004 (PAGA). Labor Code §§ 2698 *et seq.*
15 grant California employees the right to bring a civil action for violation of any provision of the
16 Labor Code on behalf of themselves and other current or former employees to recover civil
17 penalties. In passing PAGA, the California Legislature "declared that adequate financing of labor
18 law enforcement was necessary to achieve maximum compliance with state labor laws, that
19 staffing levels for labor law enforcement agencies had declined and were unlikely to keep pace
20 with future growth of the labor market, and that it was therefore in the public interest to allow
21 aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code
22 violations." *Arias v. Super. Ct.*, 46 Cal. 4th 969, 980 (2009).

23 7. PAGA permits aggrieved employees to collect the civil penalties authorized by
24 law and normally collectible by the Labor and Workforce Development Agency ("LWDA") or
25 any of its departments or divisions. *See* Lab. Code § 2699(a). However, because the action is
26 brought on behalf of the state, 75% of the fees collected are distributed to the LWDA for the
27 enforcement of labor laws and for the education of employers and employees. The remaining
28 25% is shared between aggrieved employees. *See* Lab. Code. § 2699(i).

1 8. PAGA provides that any civil penalty assessed and collected by the LWDA for
2 violations of applicable provisions of the California Labor Code may, as an alternative, be
3 recovered through a civil action brought by an aggrieved employee on behalf of her or himself
4 and other current or former employees pursuant to procedures outlined in California Labor Code
5 § 2699.3.

6 9. California Labor Code § 2699.3(c) governs PAGA actions for civil penalties
7 arising from violations of California Labor Code § 248, which requires food sector employers to
8 provide COVID-19 supplemental paid sick leave to certain employees. Before commencing a
9 civil action, an aggrieved employee must first give notice by online filing with the LWDA and by
10 certified mail to the employer of the alleged violations, including the facts and theories to support
11 the allegation. Lab. Code. § 2699.3(c)(1)(A). If the employer fails to cure the alleged violations
12 within the 33-day period, the aggrieved employee may then commence a civil action to seek
13 penalties. Lab. Code § 2699.3(c)(2)(A).

14 10. California Labor Code § 2699.3(a) governs PAGA actions for civil penalties
15 arising from violations of California Labor Code § 2802, which requires an employer to
16 indemnify its employees for all necessary expenditures or losses incurred by the employee in
17 direct consequence of their duties. Before commencing a civil action, an aggrieved employee
18 must first give notice by online filing with the LWDA and by certified mail to the employer of
19 the alleged violations, including the facts and theories to support the allegation. Lab. Code §
20 2699.3(a)(1)(A). If the LWDA fails to investigate the alleged violations within 65 calendar days
21 of the postmark date of the notice, the aggrieved employee may then file a civil action to seek
22 penalties.

23 11. On or about December 11, 2020, Plaintiffs provided written notice of the alleged
24 violations, including the facts and theories supporting their allegations as to Defendant's
25 violations of California Labor Code §§ 248 and 2802, to the LWDA via online submission, with
26 a certified copy mailed to Defendant.

27 12. More than 33 calendar days have passed since the postmark date of Plaintiffs'
28 PAGA notice, and as of the date of filing this Complaint, Defendant has not provided any notice

1 purporting that Defendant has cured the violations complained of. See Cal. Lab. Code §
2 2699.3(c)(2)(A). Accordingly, Plaintiffs have exhausted the applicable administrative
3 requirements under PAGA as to California Labor Code § 248 and are now proceeding with this
4 action, as to that violation, as private attorneys general.

5 13. Pursuant to Labor Code Section 2699.3(a)(2)(C), Plaintiffs will amend this
6 complaint, as a matter of right, with facts and information concerning their claim for penalties
7 with respect to § 2802 on or after February 16, 2021.

8 14. Plaintiffs, on behalf of themselves and all others similarly situated, also request
9 reasonable attorneys' fees and costs pursuant to, *inter alia*, California Labor Code § 2699(g); and
10 Code of Civil Procedure § 1021.5.

11 **II. JURISDICTION AND VENUE**

12 15. The Court has jurisdiction over this action pursuant to Article 6, § 10 of the
13 California Constitution and California Code of Civil Procedure § 410.10.

14 16. The Court has jurisdiction over Defendant because it is a corporation authorized
15 to do business in the State of California and is registered with the California Secretary of State.
16 Defendant does sufficient business with sufficient minimum contacts in California, and/or
17 otherwise intentionally avails itself of the California market through the advertising, marketing
18 and sale of goods and services, to render the exercise of jurisdiction over Defendant by the
19 California court consistent with traditional notions of fair play and substantial justice.

20 17. Venue is proper in this judicial district pursuant to Code of Civil Procedure §
21 395.5. Defendant employed Plaintiffs and other employees in this County, transacts business in
22 this County, and events complained of in this Complaint occurred in this County.

23 **III. THE PARTIES**

24 18. Plaintiffs and the other aggrieved employees as set forth below are workers who
25 have performed work for Defendants out of any of their California facilities from January 30,
26 2020 through the resolution of this action.

27 19. Plaintiff Derek Morris is a resident of California. Plaintiff worked as a
28 maintenance mechanic at Foster Farms' Livingston plant from approximately October 2019

1 through October 2020. During the pandemic, Mr. Morris labored under hazardous working
2 conditions at the plant, contracted COVID-19 in late July 2020, and was advised by medical
3 professionals to quarantine. Upon his request for sick leave, Foster Farms allowed him only to
4 take unpaid time off. Mr. Morris suffered lingering gastrointestinal problems and migraines
5 because of the virus, and Foster Farms ultimately penalized and fired him for COVID-19-related
6 work absences. Mr. Morris was also forced to pay out of pocket for PPE, including gloves, masks,
7 and hand sanitizer, with no reimbursement.

8 20. Plaintiff Felipe Deleon is a food service line lead at the Livingston plant. He has
9 worked in food service at the plant since approximately January 2016. During the pandemic, Mr.
10 Deleon labored under hazardous working conditions at the plant, contracted COVID-19 in August
11 2020, and was advised by medical professionals to quarantine. When Mr. Deleon notified his
12 employer of this and requested sick leave, Foster Farms penalized him by giving him “points” for
13 missed workdays until his doctor intervened. Foster Farms did not provide him with paid sick
14 leave, instead requiring him to use vacation pay. Mr. Deleon was also forced to pay out of pocket
15 for PPE, including masks, with no reimbursement.

16 21. Defendant Foster Farms is and at all relevant times has been engaged in the
17 business of poultry processing in the State of California.

18 **IV. FACTUAL ALLEGATIONS**

19 22. Plaintiff incorporates herein by reference the allegations set forth above.

20 23. Defendant operates numerous poultry processing and related facilities throughout
21 California. Defendant employs thousands of frontline workers throughout the state who have
22 continued to work during the pandemic. These frontline workers must labor in close quarters
23 with each other, making access to PPE and the financial ability to quarantine—i.e., paid sick
24 leave, essential to their physical and financial health and safety.

25 **A. COVID-19 Pandemic**

26 24. On December 31, 2019, the Wuhan Municipal Commission reported a cluster of
27 pneumonia cases in Wuhan, Hubei Province, China. This led to the identification of a novel
28 coronavirus called SARS CoV-2. SARS CoV-2 has caused a worldwide pandemic of the

1 respiratory illness known as COVID-19.

2 25. COVID-19 symptoms can be severe and life-threatening. Even asymptomatic
3 individuals – who Centers for Disease Control (“CDC”) research estimates account for
4 approximately 40% of cases – are 75% as infectious as symptomatic individuals and therefore
5 likely to spread the virus.³ For this reason, the CDC and other health experts have recommended
6 that every individual should take significant efforts to avoid close contact with others, whether
7 those others appear to be infected or not, and use PPE, particularly in crowded environments.

8 26. As early as April 2020, the CDC published research suggesting that a single person
9 with COVID-19 is likely to infect five or six other individuals absent aggressive physical
10 distancing practices.⁴ The CDC also reported that superspreading events, where one individual
11 alone may infect dozens of others, are likely in crowded environments.⁵ Symptoms may appear
12 as early as two, or as late as 14, days after initial exposure. A person with COVID-19 may be
13 contagious for 48 to 72 hours before experiencing symptoms. Research suggests that people may
14 be most likely to spread the virus to others during the 48 hours before they begin experiencing
15 symptoms.

16 27. COVID-19 is known to cause severe respiratory problems and viral pneumonia.
17 COVID-19 may also cause, *inter alia*, acute kidney damage, blood clots, multi-system organ
18 failure, swollen toes, loss of taste and smell, strokes, cardiac injuries and arrest, nervous system
19 damage, and death. COVID-19 survivors may experience long-term health complications beyond
20 just lung damage, including limb amputation in the case of severe blood clots, heart damage,
21 gastrointestinal problems, and neurocognitive and mental health effects.

22 28. Experts agree that, among other measures, access to PPE and paid sick leave are
23 critical components in reducing the spread of COVID-19 amongst essential workers, their
24
25

26 ³ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>.

27 ⁴ See “High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome
28 Coronavirus 2,” Steven Sanche, Yen Ting Lin, Chonggang Xu, Ethan Romero-Severson, Nick
Hengartner, and Ruian Ke, https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article?deliveryName=USCDC_333-DM25287.

⁵ https://wwwnc.cdc.gov/eid/article/26/6/20-0495_article.

1 families, and the public.⁶ At least one study has demonstrated that paid sick leave helps reduce
2 the spread of the virus.⁷ The State of California recognizes the efficacy of these strategies.
3 California accordingly requires employers to provide COVID-19-related PPE and paid COVID-
4 19 sick leave, in addition to which the California Labor Code has long required employers to
5 reimburse employees for necessary expenses, including protective equipment. *See, e.g.,*
6 Executive Order N-51-20; Cal. Lab. Code §§ 248, 248.1, 2802, 6401, 6403; 8 CCR §§ 3205,
7 3205.3, 3205.4.

8 29. On January 30, 2020, the WHO declared COVID-19 a “public health emergency
9 of international concern.”

10 30. By February 24, 2020, severe outbreaks had already occurred in China, Europe,
11 and Iran. The next day, the CDC reported that, in their view, COVID-19 was headed towards
12 pandemic status. By February 27, 2020, California Governor Gavin Newsom reported that the
13 California case count was rapidly rising, with the state monitoring at least 8,400 people. By
14 March 3, 2020, the number of confirmed infections worldwide surpassed 90,000.

15 31. On March 4, 2020, Governor Newsom declared a state of emergency because of
16 COVID-19.

17 32. On March 11, 2020, the WHO declared COVID-19 a pandemic. The White House
18 declared a national emergency within days of that announcement.

19 33. On March 19, 2020, Governor Newsom issued a statewide shelter-in-place order
20 requiring California residents to stay home. Governor Newsom’s order does not apply to
21 “essential workers,” such as Plaintiffs Morris and Deleon and Defendant’s other employees, who
22 provide necessary services to millions of Californians. Days later, the federal government
23 declared COVID-19 a major disaster in California at Governor Newsom’s request. By the end of
24

25 ⁶ *See, e.g.,* <https://laborcenter.berkeley.edu/economic-and-health-benefits-of-a-ppe-stockpile/>;
26 [https://shift.hks.harvard.edu/wp-content/uploads/2020/05/Essential-and-Unprotected-COVID-](https://shift.hks.harvard.edu/wp-content/uploads/2020/05/Essential-and-Unprotected-COVID-19-Health-Safety.pdf)
27 [19-Health-Safety.pdf](https://shift.hks.harvard.edu/essential-and-vulnerable-service-sector-workers-and-paid-sick-leave/); [https://shift.hks.harvard.edu/essential-and-vulnerable-service-sector-](https://shift.hks.harvard.edu/essential-and-vulnerable-service-sector-workers-and-paid-sick-leave/)
28 [workers-and-paid-sick-leave/](https://www.oecd.org/coronavirus/policy-responses/paid-sick-leave-to-protect-income-health-and-jobs-through-the-covid-19-crisis-a9e1a154/); [https://www.oecd.org/coronavirus/policy-responses/paid-sick-](https://www.oecd.org/coronavirus/policy-responses/paid-sick-leave-to-protect-income-health-and-jobs-through-the-covid-19-crisis-a9e1a154/)
[leave-to-protect-income-health-and-jobs-through-the-covid-19-crisis-a9e1a154/](https://www.oecd.org/coronavirus/policy-responses/paid-sick-leave-to-protect-income-health-and-jobs-through-the-covid-19-crisis-a9e1a154/).

⁷
https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00863?utm_campaign=Covid19fasttrack&utm_medium=press&utm_content=Ziebarth&utm_source=Mediaadvisory.

1 the month, the United States was reported as leading the world in COVID-19 cases, and at least
2 265 million United States residents were being asked or required to stay home.

3 34. On April 16, 2020, Governor Newsom issued Executive Order N-51-50. The
4 Order recognizes that food supply sector employees, such as Plaintiffs, are front line workers, that
5 they are more likely to go into work when ill if they do not have access to paid leave, and that
6 enabling them to quarantine by requiring employers to provide paid leave will benefit public
7 health and safety and slow the virus' spread. The Order provides certain eligible food sector
8 employees paid sick leave when they are unable to work for COVID-19-related reasons, as
9 described in further detail *infra*. Effective September 9, 2020 and retroactive to April 16, 2020,
10 the Order's requirements were incorporated into the California Labor Code. See Lab. Code §
11 248.

12 35. On May 28, 2020, the COVID-19 death toll in the United States surpassed
13 100,000. Within approximately two months, the death toll surpassed 150,000; within
14 approximately two months of that, the death toll reached 200,000, and soon thereafter 250,000.
15 On December 16, 2020, 3,448 COVID-19 patients in the United States died – the country's
16 deadliest day at that point; the United States set another record on January 12, 2021, when over
17 4,300 people died of the virus in a single day. As of January 15, 2021, the death toll in the United
18 States is at 389,000 and rapidly increasing, with 2.86 million confirmed COVID-19 cases in
19 California and 32,239 deaths here.

20 36. COVID-19 is highly contagious and easily transmitted from person to person
21 through respiratory droplets and other, smaller particles that can remain in the air for hours and
22 be inhaled, or that can land in other individuals' eyes, noses, or mouths when in close contact
23 with infected individuals. Recent reports also suggest individuals who recover from COVID-19
24 can later become re-infected.⁸

25 37. Despite small progress in flattening the curve during the summer of 2020, COVID-
26 19 case rates have recently been rising in California at such an alarming rate that on November

27 ⁸ See, e.g., [https://www.sciencemag.org/news/2020/11/more-people-are-getting-covid-19-twice-](https://www.sciencemag.org/news/2020/11/more-people-are-getting-covid-19-twice-suggesting-immunity-wanes-quickly-some)
28 [suggesting-immunity-wanes-quickly-some; https://www.nbcnews.com/health/health-](https://www.nbcnews.com/health/health-news/covid-19-reinfection-reported-nevada-patient-researchers-say-n1238679)
[news/covid-19-reinfection-reported-nevada-patient-researchers-say-n1238679;](https://www.nytimes.com/2020/08/24/health/coronavirus-reinfection.html)
[https://www.nytimes.com/2020/08/24/health/coronavirus-reinfection.html.](https://www.nytimes.com/2020/08/24/health/coronavirus-reinfection.html)

20, 2020, Governor Newsom issued an order imposing a curfew on most Californians between 10:00 p.m. and 5:00 a.m. In the two weeks leading up to November 24, 2020, hospitalizations in California due to confirmed or suspected COVID-19 cases rose more than 81%, and ICU hospitalizations increased 57.1%. On November 24, 2020, California set a nationwide record for the most new COVID-19 infections reported in a single day. The Thanksgiving holiday further exacerbated the crisis. On December 3, 2020, Governor Newsom was forced to implement a strict, regional stay-at-home order to take effect with 48 hours of a region's ICU capacity reaching less than 15%.

38. On December 7, 2020, the Los Angeles Times reported that “[s]tatewide, average daily coronavirus cases have jumped sixfold since early October, hospitalizations have quadrupled since late October, and average daily deaths have nearly tripled in just the last month.”⁹ Several California counties responded to these alarming trends by voluntarily implementing more stringent shelter-in-place restrictions effective immediately, rather than waiting to reach the ICU capacity benchmark Governor Newsom identified. In some regions, however, it was already too late. In the area comprising Los Angeles in San Diego, for example, only 10.9% of ICU beds were available as of December 7, 2020. Similarly, as of the same date only 6.3% of ICU beds were available in the 11 counties that comprise the San Joaquin Valley. By December 11, 2020, fewer than 10% of ICU beds were available across California. By December 22, 2020, statewide ICU capacity fell below 2%. On Christmas Day 2020, the statewide ICU capacity fell to zero.

39. Among those most at risk amidst this public health disaster are essential workers, such as the frontline workers whose health and legal rights Foster Farms has consistently disregarded. Multiple outbreaks have occurred at its California facilities, hundreds of workers have fallen ill, some of whom have died, and its Livingston and Fresno plants are the subjects of ongoing investigations by the California Department of Occupational Health and Safety (“Cal/OSHA”).¹⁰ Additionally, on December 23, 2020, Superior Court Judge Donald Proietti in

⁹ <https://www.latimes.com/california/story/2020-12-07/los-angeles-county-coronavirus-california-stay-at-home-order>.

¹⁰ See, e.g., *id.*

1 this County granted a temporary restraining order at the United Farm Workers’ request. Among
2 other requirements, the order compels Foster Farms to provide protective equipment to workers
3 at its Livingston plant and to follow other public health measures it has been ignoring.

4 40. There is currently no widely available vaccine for COVID-19. Though the Food
5 and Drug Administration recently authorized use of COVID-19 vaccines, states are struggling to
6 obtain enough doses and the State of California estimates that all residents will not be vaccinated
7 until at least summer 2021. Moreover, public health experts have warned that a vaccine alone,
8 even once commonly available, will not be enough to end the pandemic. Public health measures
9 that experts have promoted since early 2020 and that the California Labor Code *requires* –
10 including covering the cost of PPE and providing paid COVID-19 sick leave to eligible employees
11 – remain crucial.

12 41. Foster Farms, as a matter of policy and/or practice, has failed to cover the
13 necessary expense of PPE, such as masks, hand sanitizer, and gloves since the outset of the
14 pandemic. Similarly, Foster Farms, as a matter of policy and/or practice, has failed to provide
15 COVID-19 food sector supplemental paid sick leave to eligible employees.

16 **B. Foster Farms’ Failure to Reimburse Employees for the Cost of PPE**

17 42. California Labor Code § 2802 requires an employer to “indemnify [its]
18 employee[s] for all necessary expenditures or losses incurred by the employee[s] in direct
19 consequence of the discharge of [their] duties.” Section 2802’s purpose is “to prevent employers
20 from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers,*
21 *Inc.*, 42 Cal. 4th 554, 562 (2007). The cost of purchasing personal protective equipment
22 represents one such operating expense. It arises as a direct consequence of frontline workers
23 discharging their duties, which place them in close quarters and at higher risk of contracting
24 COVID-19 than the general public. Moreover, case law confirms that California law requires an
25 employer to provide its employees with personal protective equipment, at the employer’s expense,
26 and if it fails to do so, must reimburse the employees for any such materials employees purchase
27 themselves. *See Bendix Forest Prods. Corp. v. Div. of Occupational Safety*, 25 Cal. 3d 465, 472-
28 73 (1979) (analyzing Cal. Lab. Code § 6401); *Rincon v. W. Coast Tomato Growers, LLC*, 2016

U.S. Dist. LEXIS 197176, at *21 (S.D. Cal. July 11, 2016) (citing Cal. Lab. Code §§ 6401, 6403, 2802).

43. Plaintiffs' experiences at Foster Farms' Livingston plant exemplify Foster Farms' widespread failure to provide PPE and its subsequent, systematic failure to reimburse employees for the cost of PPE. Management at the Livingston plant does not provide sufficient PPE to employees, leaving them to fend for themselves. Consequently, employees must purchase PPE to be able to continue working and carrying out their job duties. Foster Farms does not reimburse employees for these expenses. Plaintiff Morris, for example, was forced to purchase gloves, masks, and hand sanitizer, without reimbursement. Similarly, Plaintiff Deleon has had to purchase masks without being reimbursed. On information and belief, similar policies and practices exist and affect workers at Foster Farms' other California facilities.

44. In sum, Foster Farms has provided employees insufficient PPE during the pandemic. This results in a policy and/or practice wherein Plaintiffs and the aggrieved employees have no choice but to purchase their own PPE, without reimbursement, a violation of California Labor Code § 2802. Where, as here, an employer has violated California Labor Code § 2802, aggrieved employees may seek penalties under the Private Attorneys General Act of 2004. Cal. Lab. Code §§ 2699.3(a), 2699.5.

C. Foster Farms' Failure to Provide Paid Sick Leave

45. On April 16, 2020, Governor Newsom issued Executive Order N-51-50. The Order recognizes that food supply sector employees, such as Plaintiffs, are front line workers, that they are more likely to go into work when ill if they do not have access to paid leave, and that enabling them to quarantine by requiring employers to provide paid leave will benefit public health and safety and slow the virus' spread. The Order provides certain eligible food sector employees paid sick leave when they are unable to work for COVID-19-related reasons. Effective September 9, 2020 and retroactive to April 16, 2020, the Order's requirements were incorporated into the California Labor Code. See Cal. Lab. Code § 248.

46. California Labor Code § 248 provides that employers must provide COVID-19 food sector supplemental paid sick leave to food sector workers under certain circumstances. Cal.

1 Lab. Code § 248(a)(2)(A) defines a “food sector worker” as someone who meets at least one of
2 the following criteria:

- 3 (i) The person works in an industry or occupation defined in paragraph (B) of
4 Section 2 of IWC Wage Order 3-2001, paragraph (H) of Section 2 of IWC
5 Wage Order 8-2001, or paragraph (D) of Section 2 of IWC Wage Order
6 14-2001.
- 7 (ii) The person works for a hiring entity that operates a food facility, as defined
8 in Section 113789 of the Health and Safety Code.
- 9 (iii) The person delivers food from a food facility, as defined in Section 113789
10 of the Health and Safety Code, for or through a hiring entity.

11 47. Under California Labor Code § 248(b)(1), an employer must provide supplemental
12 paid sick leave to a “food sector worker” if that worker cannot work for any one of the following
13 reasons:

- 14 (A) The food sector worker is subject to federal, state, or local quarantine or
15 isolation order related to COVID-19.
- 16 (B) The food sector worker is advised by a health care provider to self-quarantine
17 or self-isolate due to concerns related to COVID-19.
- 18 (C) The food sector worker is prohibited from working by the food sector worker’s
19 hiring entity due to health concerns related to the potential transmission of
20 COVID-19.

21 48. Plaintiffs and the other aggrieved employees here qualify as “food sector” workers
22 because they work in the “Canning, Freezing, and Preserving Industry” and/or “Industries
23 Handling Products After Harvest, as defined in IWC Wage Orders 3-2001, Section 2(B), and 8-
24 2001, Section 2(H). See Cal. Lab. Code §§ 248(a)(2)(A)(i), 248(a)(3). Moreover, Plaintiffs and
25 the other aggrieved employees qualify as “food sector workers” on the separate basis that Foster
26 Farms operates “food facilities” within the meaning of California Health and Safety Code §
27 113789. See Cal. Lab. Code § 248(a)(2)(A)(iii).

28 49. Plaintiffs’ experiences exemplify Foster Farms’ blanket policy and/or practice of
denying paid sick leave to eligible workers during the COVID-19 pandemic. Both labored under
hazardous conditions at the Livingston plant, contracted COVID-19 in the summer of 2020, and
were unlawfully denied paid sick leave.

50. Plaintiff Morris contracted COVID-19 in late July 2020 and was advised by
medical professionals to quarantine. Plaintiff Morris was thus eligible for paid sick leave under
California Labor Code § 248(b)(1)(A). Upon his request for sick leave, however, Foster Farms

1 allowed him only to take unpaid time off. To make matters worse, Mr. Morris suffered lingering
2 gastrointestinal problems and migraines because of the virus, and Foster Farms ultimately
3 penalized and fired him for COVID-19-related work absences.

4 51. Plaintiff Deleon contracted COVID-19 in August 2020 and was advised by
5 medical professionals to quarantine. Plaintiff Deleon was thus eligible for paid sick leave under
6 California Labor Code § 248(b)(1)(A). When Mr. Deleon notified Foster Farms of his COVID-
7 19 infection and requested sick leave, Foster Farms not only denied him paid sick leave, but also
8 penalized him by giving him “points” for missed workdays until his doctor intervened.

9 52. In sum, Foster Farms has a policy and/or practice of failing to provide employees
10 COVID-19 food sector paid supplemental sick leave, a violation of California Labor Code § 248.
11 Where, as here, an employer has violated California Labor Code § 248, aggrieved employees may
12 seek penalties under the Private Attorneys General Act of 2004. Cal. Lab. Code § 2699.3(c).

13 **V. CAUSE OF ACTION**

14 **Civil Penalties Pursuant to PAGA (Labor Code §§ 2698, *et seq.*)**

15 53. Plaintiffs hereby incorporate and reallege each and every paragraph of this
16 Complaint as if the same were set forth herein.

17 54. At all times herein set forth, the Private Attorneys General Act of 2004 (PAGA)
18 applied to Defendant’s employment of Plaintiffs and the other aggrieved employees.

19 55. At all times herein set forth, the PAGA provided that any provision of law under
20 the California Labor Code that provides for a civil penalty to be assessed and collected by the
21 Labor and Workforce Development Agency (LWDA) for violations of the California Labor Code
22 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
23 behalf of her or himself and other current or former employees pursuant to procedures outlined
24 in California Labor Code § 2699.3.

25 56. At all times set forth herein, the PAGA provided that for the violation of any Labor
26 Code provision that does not itself contain a civil penalty, there are established civil penalties of
27 \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
28 aggrieved employee per pay period for each subsequent violation. Cal. Lab. Code § 2699(f).

57. A civil action under PAGA may be brought by an “aggrieved employee,” any

1 person that was employed by the alleged violator and against whom one or more of the alleged
2 violations was committed.

3 58. Plaintiffs have been employed by Defendants and the alleged violations were
4 committed against them during their time of employment. Plaintiffs are, therefore, aggrieved
5 employees. Plaintiffs and other employees are “aggrieved employees” as defined by California
6 Labor Code § 2699(c) in that they are all current or former employees of Defendants, and one or
7 more of the alleged violations were committed against them.

8 59. California Labor Code § 2699.3(c) governs PAGA actions for civil penalties
9 arising from violations of California Labor Code § 248, which requires employers in the food
10 sector to provide COVID-19 supplemental paid sick leave to certain employees. Before
11 commencing a civil action, an aggrieved employee must first give notice by online filing with the
12 LWDA and by certified mail to the employer, with a copy to the LWDA, of the alleged violation,
13 including the facts and theories to support the allegation. Lab. Code. § 2699.3(c)(1)(A). If the
14 employer fails to cure the alleged violation within the 33-day period, the aggrieved employee may
15 then commence a civil action to seek penalties for it. Lab. Code § 2699.3(c)(2)(A).

16 60. California Labor Code § 2699.3(a) governs PAGA actions for civil penalties
17 arising from violations of California Labor Code § 2802, which requires an employer to
18 indemnify its employees for all necessary expenditures or losses incurred by the employee in
19 direct consequence of their duties. Before commencing a civil action, an aggrieved employee
20 must first give notice by online filing with the Labor and Workforce Development Agency
21 (“LWDA”) and by certified mail to the employer, with a copy to the LWDA, of the alleged
22 violation, including the facts and theories to support the allegation. Lab. Code § 2699.3(a)(1)(A).
23 If the LWDA fails to investigate the alleged violation within 65 calendar days of the postmark
24 date of the notice, the aggrieved employee may then file a civil action to seek penalties for it.

25 61. On or about December 11, 2020, Plaintiffs provided written notice of the alleged
26 violations of §§ 248 and 2802 to the LWDA via online submission, with a certified copy mailed
27 to Defendant.

28 62. More than 33 calendar days have passed since the postmark date of Plaintiffs’

1 PAGA notice, and as of the date of filing this Complaint, Defendant has not provided any notice
2 purporting that Defendant has cured the violation complained of. See Cal. Lab. Code §
3 2699.3(c)(2)(A). Accordingly, Plaintiffs have exhausted the applicable administrative
4 requirements as to California Labor Code § 248 and are now proceeding with this action, as to
5 that violation, as private attorneys general. Plaintiffs reserve the right to amend this complaint
6 with facts and information concerning the administrative exhaustion for their claim for penalties
7 with respect to § 2802.

8 63. Plaintiff seeks to represent all current and former employees of Defendant in
9 California (“aggrieved employees”) who suffered one or more of the alleged violations of § 248
10 from April 16, 2020 until the commencement of trial in this matter (“§ 248 PAGA period”).

11 64. More than 33 calendar days have passed since the postmark date of Plaintiffs’
12 PAGA notice, and as of the date of filing this Complaint, Defendant has not provided any notice
13 purporting that Defendant has cured the violation complained of. See Cal. Lab. Code §
14 2699.3(c)(2)(A). Accordingly, Plaintiffs have exhausted the applicable administrative
15 requirements as to California Labor Code § 248 and are now proceeding with this action, as to
16 that violation, as private attorneys general. Plaintiffs reserve the right to amend this complaint
17 with facts and information concerning their claim for penalties with respect to § 2802 and will
18 seek to represent all current and former employees of Defendant in California (“aggrieved
19 employees”) who suffered one or more of the alleged violations of § 2802 from January 30, 2020
20 until the commencement of trial in this matter (“§ 2802 PAGA period”).

21 65. Plaintiffs hereby seek civil penalties for the Labor Code violations described
22 herein.

23 66. Labor Code section 2699(g) further provides that any employee who prevails in
24 an action for civil penalties is entitled to an award of reasonable attorneys’ fees and costs.
25 Plaintiffs also seek to recover their reasonable attorneys’ fees and costs.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff, on behalf of himself and the proposed Collective he seeks to
28 represent in this action, requests the following relief:

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- a. That the Court find that Defendant has been in violation of Labor Code §§ 248 and 2802;
- i. Prejudgment interest under Cal Civ. C. § 3287, and other applicable law;
- j. That the Court award to Plaintiffs and the aggrieved employees civil penalties as provided herein, including but not limited to Labor Code §§ 98, 248.5, 2699(a), 2699(f);
- k. That Plaintiff and the Class be awarded reasonable attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1), Code of Civil Procedure § 1021.5, and/or other applicable law;
- l. Any and all other applicable statutory penalties, as provided by law; and
- m. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

DATED: January 15, 2020

**SCHNEIDER WALLACE COTTRELL
KONECKY LLP**

By: 
Sarah A. McCracken
Attorneys for Plaintiff