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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

YOLANDA ESPARZA, an
individual, on behalf of herself and
the State of California, as a private
attorney general, and on behalf of
all others similarly situated,

Plaintiff,

vs.

WELLINGTON FOODS, INC., a
California Corporation; and DOES
1-100, inclusive,

Defendant(s).

CASE NO. _____

**REPRESENTATIVE ACTION
COMPLAINT**

**1. FOR PENALTIES PURSUANT
TO LABOR CODE §§2698-
2699.5 FOR:**

- a. Failure to provide meal
breaks and pay premium
wages for missed meal breaks
in violation of Cal. Labor
Code § 512 & § 11 of
Industrial Welfare
Commission Order No. 1-
2001 and Cal. Labor Code
§226.7
- b. Failure to provide complete
and accurate wage statements
in Violation of Cal. Labor
Code §226(a)

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2. **Unfair Business Practices in
Violation of Cal. Business &
Prof. Code §§ 17200, et seq.**

Plaintiff YOLANDA ESPARZA, an individual, on behalf of herself and people of the State of California as an “aggrieved employee” acting as a private attorney general under the Labor Code Private Attorneys General Act of 2004, § 2698, *et seq.* (“PAGA”), on information and belief, makes the following allegations to support her unverified Complaint.

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants because they are residents of and/or are doing business in the State of California.

2. Venue is proper in this county in accordance with Section 395(a) of the California Code of Civil Procedure because the Defendants, or some of them, reside in Riverside County and/or the alleged wrongs occurred in the county. Venue is also proper in this county because it was the county where Plaintiff and all aggrieved employees were paid.

NATURE OF ACTION

3. This is a representative action brought pursuant to Labor Code § 2699, *et seq.*, on behalf of the State of California on behalf of the group of aggrieved employees defined as:

- (a) (a) all individuals who were employed by Wellington Foods, Inc. or its subsidiary, predecessor, or merged entities in California as hourly, non-

1 exempt employees, from one year prior to the date of this letter and
2 continuing into the present.

3 These groups may collectively be referred to herein as aggrieved employees
4 and/or all aggrieved employees where appropriate.

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6 4. Plaintiff, on behalf of herself and all aggrieved employees presently
7 or formerly employed by Defendants during the PAGA Period (December 7, 2019
8 and ongoing), brings this representative action pursuant to Labor Code § 2699, *et*
9 *seq.* seeking penalties for Defendants' violations of the California Labor Code §§
10 226, 226.7, 512 and IWC Wage Order No. 1-2001 for failure to provide meal
11 breaks, and failure to pay premium wages for missed meal breaks respectively;
12 failure to provide accurate and complete wage statements in violation of Cal.
13 Labor Code § 226.

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15 5. This action also arises out of Defendants' unfair business practices in
16 violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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18 **PLAINTIFF**

19 6. Plaintiff YOLANDA ESPARZA, an individual, is a 45-year old,
20 Hispanic female, who has been an employee of Wellington Foods Incorporated
21 since December 2018 until her wrongful constructive termination on March 1,
22 2020, on account of enduring a horrific and hostile environment and failure of the
23 Company to act on the incidents she reported.

24 7. At all relevant times, Plaintiff Ms. Esparza was employed with
25 Wellington Food, Inc. full time as a Sanitization Technician for \$18 per hour.
26 Plaintiff is, and at all relevant times mentioned herein was, a resident of the State
27 of California, City of Pomona. Plaintiff is, and at all relevant times was, an
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1 “employee” within the meaning of the California Labor Code and is therefore an
2 appropriate representative for employees similarly aggrieved by wage and hour
3 violations within the purview of the PAGA, Labor Code §§ 2699, *et seq.*

4 8. Plaintiff represents the State of California and a group of aggrieved
5 employees defined as all individuals who were employed by Wellington Foods,
6 Inc. or its predecessor or merged entities in California as hourly, non-exempt
7 employees from December 7, 2019 and continuing into the present (hereinafter
8 referred to as “aggrieved employees”).

9 9. This group may collectively be referred to herein as aggrieved
10 employees and/or all aggrieved employees where appropriate.
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12 **DEFENDANTS**

13 10. Defendant WELLINGTON FOODS, INC., a California corporation,
14 (hereinafter “Wellington”) is licensed to do business in the State of California.
15 Defendant Wellington is a contract manufacturer of liquid and powder based
16 nutritional supplements. The company was founded in 1974 and since that time
17 has manufactured products for many brands in the nutritional supplement
18 industry. At all times mentioned herein, Wellington was an “employer” of Plaintiff
19 within the meaning of the California Labor Code and is a “person” as defined by
20 Cal. Bus. & Prof. Code § 17021.
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22 11. In doing the acts herein alleged, Defendant’s employees,
23 subcontractors, and agents acted within the course and scope of their employment
24 and agency with Defendant, and engaged in the acts alleged herein and/or
25 conducted, permitted, authorized, and/or ratified the conduct of its employees,
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subcontractors, and agents, and is vicariously liable for the wrongful conduct of its employees, subcontractors, and agents alleged herein.

12. Defendants DOES 1 through 100, inclusive, are other possible Defendants responsible for the wrongful conduct alleged herein. The true names and capacities of Defendants named herein as DOES 1 through 100, inclusive, whether individual, corporate, associate, or otherwise, are unknown to Plaintiff, who therefore sues such Defendants by such fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiff is informed and believes that the DOE Defendants are California residents. Plaintiff will amend his Complaint to show true names and capacities when they have been determined. Plaintiff is informed and believes, and on the basis of such information and belief alleges, that each Defendant DOE herein is in some manner responsible for the harassment, retaliation against and wrongful termination of Plaintiff due to his protected reporting activities, and damages herein alleged.

13. Defendants WELLINGTON FOODS, INCORPORATED, and DOES 1 through 100, inclusive, are hereinafter referred to collectively as "Defendants" unless otherwise specifically identified.

14. Plaintiff is informed and believes and thereon alleges that each Defendant is, and at all times mentioned was, the agent, employee or representative of each other Defendant. Each Defendant, in doing the acts, or in omitting to act as alleged in this Complaint, was acting within the scope of his or her actual or apparent authority, or the alleged acts and omissions of each Defendant as an agent were subsequently ratified and adopted by each other Defendant as a principal. Plaintiff is further informed and believes, and based

1 thereon alleges, that each Defendant, acting as the agent of the other Defendants,
2 carried out a joint scheme, business plan or policy in all respects pertinent hereto,
3 and the acts of each Defendant are legally attributable to the other Defendants.
4 Furthermore, Defendants in all respects acted as the employer and/or joint
5 employer of Plaintiff and the other aggrieved employees.
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7 15. California courts have recognized that the definition of “employer”
8 for purposes of enforcement of the California Labor Code goes beyond the concept
9 of traditional employment to reach irregular working arrangements for the
10 purpose of preventing evasion and subterfuge of California’s labor laws. [*Martinez*
11 *v. Combs* (2010) 49 Cal. 4th 35, 65]. As such, anyone who directly or indirectly, or
12 through an agent or any other person, engages, suffers, or permits any person to
13 work or exercises control over the wages, hours, or working conditions of any
14 person, may be liable for violations of the California Labor Code as to that person.
15 Cal. Labor Code § 558.1.
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17 **EXHAUSTION OF REMEDIES**

18 16. Plaintiff timely filed a PAGA claim/complaint with the California
19 Labor Workforce Development Agency (LWDA) on December 7, 2020 against
20 Defendants online and served her PAGA notice by certified mail on Defendants
21 setting forth the facts and theories of the violations alleged against Defendants, as
22 prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A),
23 no notice was received by Plaintiff from the LWDA evidencing its intention to
24 investigate within sixty-five (65) calendar days of the postmark date of the PAGA
25 notice. Plaintiff is entitled to commence and proceed with a civil action pursuant
26 to Labor Code § 2699.
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17. Plaintiff has, therefore, exhausted his administrative remedies prior to bringing her representative action for penalties for Labor Code violations pursuant to the Labor Code Private Attorney General Act of 2004 (“PAGA”) (Cal. Labor Code § 2698, *et seq.*).

FACTUAL ALLEGATIONS

18. Ms. Yolanda Esparza is a 45-year old, Hispanic female, who has been an employee of Wellington Foods Incorporated since December 2018 until her wrongful constructive termination on March 1, 2020, on account of enduring a horrific and hostile environment and failure of Wellington to act on the incidents she reported. Ms. Esparza worked 40 hours a week for \$18 per hour as a Sanitization Technician.

19. During the entire course of her employment with Defendants, Ms. Esparza was not allowed to leave the work premises during her lunch breaks and required to stay on premises during lunch rebukes. Similarly, all aggrieved employees were also required to stay on premises during meal breaks and not allowed to leave the premises for their meal breaks. Thus, Defendants did not maintain a policy and/or practice that allowed employees to leave work premises during meal periods, violating their own written policy that provides that employees could leave the work premises for meals.

20. Neither Plaintiff nor all aggrieved employees were not paid any premium wages for these non-compliant meal breaks when they were not allowed to leave the worksite. Thus, the wage statements issued by Wellington to Plaintiff and all aggrieved employees were not accurate because they did not indicate the correct amount of gross wages earned, total hours worked, and net wages earned.

1 **FIRST CAUSE OF ACTION**

2 **Penalties pursuant to Labor Code Private Attorney General Act of 2004**

3 **("PAGA")(Labor Code §§2698-2699.5)**

4 **(Against All Defendants)**

5 1. Plaintiff realleges and incorporates by reference, as though fully set
6 forth herein, each and every allegation set forth in the paragraphs above.

7 2. As set forth in detail under "Factual Allegations," Defendant violated
8 California Labor Code §§ 226(a), 226.7, 512 and IWC Wage Order No. 1-2001
9 Section 12.

10 3. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation,
11 Plaintiff and all other aggrieved employees are entitled to penalties in an amount
12 to be shown at the time of trial subject to the following formula:

13 \$100 for the initial violation per employee per pay period; and

14 \$200 for each subsequent violation per employee per pay period.

15 These penalties will be allocated 75% to the Labor Workforce Development
16 Agency and 25% to the affected employees. These penalties may be stacked
17 separately for each of Defendants violations of the California Labor Code. *See e.g.*
18 *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist.
19 LEXIS 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that although the
20 plaintiff did not seek stacked PAGA penalties, that "PAGA penalties can be
21 'stacked,' i.e., multiple PAGA penalties can be assessed for the same pay period for
22 different Labor Code violations.").

23 4. As a result, Plaintiff, as an Aggrieved Employee, may seek, in addition
24 to any civil penalty allowable under the law, an amount sufficient to recover
25 unpaid wages for all work performed and nonproductive times, including unpaid
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wages, meal period premiums, for violation of Labor Code sections 226.7, and IWC Wage Order No. 1-2001.

Violation of Cal. Labor Code § 512 & § 11 Industrial Welfare Commission Order No. 1-2001 for Failure to Provide Meal Breaks and Cal. Labor Code 226.7 for failure to pay premium wages

5. Under California Labor Code § 512(a), an employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. Industrial Welfare Commission Order No. 1-2001 regulates wages, hours, and working conditions in professional, technical, clerical, mechanical and similar occupations. Pursuant to its § 11, subsection (A) that governs meal periods, no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes.

6. Pursuant to its Section 11, subsections (C) and (D), unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked, and if an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.

7. In *Brinker Restaurant Corporation v. Superior Court* (2012) 53 Cal. 4th 1004, the Supreme Court of California held that “The employer satisfies this obligation [to provide a meal period] if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable

1 opportunity to take an uninterrupted 30 minute break and does not impede or
2 discourage them from doing so.” (Emphasis added.) Thus, unless the employee is
3 relieved of all duty during a 30-minute meal period, the meal period shall be
4 considered an "on duty" meal period and counted as time worked.

5 8. The Dept. of Industrial Relations in its *DLSE Opn. Letter No.*
6 *1991.06.03 (June 3, 1991)* in reading *Brinker Restaurant Corp. v. Superior Court*
7 *(2012) 53 Cal.4th 1004, 1036* opined that “[T]he wage order’s meal period
8 requirement is satisfied if the employee (1) has at least 30 minutes uninterrupted,
9 (2) is free to leave the premises, and (3) is relieved of all duty for the entire
10 period.”].

11 9. Further, employers are required to pay employees an additional one
12 (1) hour of pay at the employee’s regular rate of compensation for each workday
13 that the meal period is not compliant. Similarly, pursuant to California Labor Code
14 § 226.7(c), employers are liable to pay employees one additional hour of pay at
15 their regular rate of compensation for each workday that the meal or rest or
16 recovery period is not in compliance with the applicable law or statute, including
17 order of the Industrial Wage Commission.

18 10. Here, Defendants failed to provide compliant meal breaks to Ms.
19 Esparza and all aggrieved employees due to their policy/practice of not allowing
20 them to leave the work premises during their meal breaks. Further, Defendants
21 also failed to pay Ms. Esparza and all aggrieve employees for each meal period that
22 was not provided in violation of Labor Code § 512 and § 11 of the Industrial
23 Welfare Commission Order No. 1-2001. Further, Defendants failed in their duty
24 to ensure that Ms. Esparza and aggrieved employees’ meal breaks were completely
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1 off duty where they relinquished all control over them as well as in their duty to
2 ensure they were paid the premium wage for all non-compliant meal breaks.

3 11. Pursuant to the ruling of the Court of Appeals of California in *Safeway*
4 *Inc. v. Superior Court* 238 Cal. App. 4th 1138 (2015)., it is not sufficient for an
5 employer to merely implement a policy that effectively provides compliant meal
6 breaks. The employer must also record the timing and duration of the breaks, and
7 then implement a separate good faith mechanism for determining whether a
8 premium wage is actually due as a result of any missed breaks. Plaintiff's and all
9 aggrieved employees' meal periods were obstructed by Defendants, as provided
10 above. Ms. Esparza and all aggrieved employees were not allowed to take fully
11 compliant meal breaks because Defendants did not relieve them of all duties
12 during meal times by preventing them to leave the work premises during lunch
13 time.
14

15 12. Further, as stated above, Defendants failed to compensate Ms.
16 Esparza and all aggrieved employees for every meal period they were not provided
17 or not relieved from all duties during their meal periods, during their employment
18 or at the time their termination, as applicable.
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20 13. Thus, Defendants, and each of them, violated the provisions of Cal.
21 Labor Code Section 512 due to their failure to provide Plaintiff and all aggrieved
22 employees compliant meal breaks. As a result, under Labor Code §§ 2699(f)(2)
23 and 2699.5, Defendants, and each of them are liable to pay and Plaintiff is entitled
24 to recover, civil penalties on behalf of herself and all other aggrieved employees
25 penalties for each such violation, in an amount of \$100 for the initial violation per
26 employee per pay period; and \$200 for each subsequent violation per employee
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1 per pay period.

2 14. Thus, Defendants, and each of them, violated the provisions of
3 Section § 11 of the Industrial Welfare Commission Order No. 1-2001 due to their
4 failure to provide Plaintiff and all aggrieved employees compliant meal breaks.
5 Pursuant to § 20 of IWC Wage Order No. 1-2001, Plaintiff will seek civil penalties
6 of fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for
7 each subsequent violation for each pay period on behalf of herself and all
8 aggrieved employees who were denied premium wages for all meal periods that
9 Defendants failed . Additionally, Plaintiff and all aggrieved employees will seek to
10 recover unpaid premium wages.
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12 15. Further, Defendants, and each of them, violated Cal. Labor Code
13 Section 226.7 due to their failure to pay Plaintiff and all aggrieved employees
14 premium wages for their non-compliant meals breaks. As a result, under Labor
15 Code §§ 2699(f)(2) and 2699.5, Defendants, and each of them, are liable to pay
16 and Plaintiff is entitled to recover, civil penalties on behalf of herself and all other
17 aggrieved employees penalties for each such violation, in an amount of \$100 for
18 the initial violation per employee per pay period; and \$200 for each subsequent
19 violation per employee per pay period.
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22 **Violation of Cal. Labor Code § 226(a) for Failure to Provide Complete and**
23 **Accurate Wage Statements**

24 16. In addition, as set forth above, Defendants failed to provide complete
25 and accurate wage statements to Ms. Esparza and all aggrieved employees in
26 violation of Cal. Labor Code §226(a), which obligates employers, semi-monthly or
27 at the time of each payment, to furnish an itemized wage statement in writing
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1 showing:

- 2 (1) gross wages earned;
- 3 (2) total hours worked by the employee;
- 4 (3) the number of piece-rate units earned and any applicable piece rate if the
- 5 employee is paid on a piece rate;
- 6 (4) all deductions, provided that all deductions made on written orders of the
- 7 employee may be aggregated and shown as one item;
- 8 (5) net wages earned;
- 9 (6) the inclusive dates of the period for which the employee is paid;
- 10 (7) the name of the employee and only the last four digits of his or her social
- 11 security number or an employee identification number other than a social
- 12 security number;
- 13 (8) the name and address of the legal entity that is the employer...;
- 14 (9) all applicable hourly rates in effect during the pay period and the
- 15 corresponding number of hours worked at each hourly rate by the
- 16 employee...[.]

17 17. As a result of Defendants' failure to pay Ms. Esparza and all aggrieved
18 employees meal period premiums for their non-compliant breaks, the wage
19 statements issued by them do not indicate the correct amount of gross wages
20 earned, total hours worked, and net wages earned. Therefore, Defendants failed
21 to provide accurate itemized wage statements setting forth the information
22 required by Labor Code § 226(a). Failing to include rest period premiums on an
23 employee's wage statement violates Labor Code § 226(a). See e.g. *Fields v. West*
24 *Marine Prods.* (N.D. Cal. Feb. 7, 2014) 2014 U.S. Dist. LEXIS 16638.
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1 18. Cal. Labor Code § 226(e)(1) provides that an employee suffering
2 injury as a result of a knowing and intentional failure by an employer to comply
3 with subdivision (a) is entitled to recover the greater of all actual damages or fifty
4 dollars (\$50) for the initial pay period in which a violation occurs and one hundred
5 dollars (\$100) per employee for each violation in a subsequent pay period, not to
6 exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
7 an award of costs and reasonable attorney's fees.
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9 19. Cal. Labor Code §226(e)(2)(B) further provides that an employee is
10 deemed to suffer injury for purposes of this subdivision if the employer fails to
11 provide accurate and complete information as required by any one or more of
12 items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
13 easily determine from the wage statement alone the amount of the gross wages or
14 net wages paid to the employee during the pay period or any of the other
15 information required to be provided on the itemized wage statement pursuant to
16 items (2) to (4), inclusive, (6), and (9) of subdivision (a).
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18 20. Thus, Defendants, and each of them, violated the provisions of Cal.
19 Labor Code 226(a). As a result of Defendants' failure to provide Ms. Esparza and
20 aggrieved employees accurate itemized wage statements, Plaintiff and all
21 aggrieved employees are entitled to damages, penalties, as well as an award of
22 costs and reasonable attorney's fees pursuant to Cal. Labor Code §§ 226(e)(1) and
23 226(e)(2)(B).
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25 21. Cal. Labor Code § 226.3 provides that "[a]ny employer who violates
26 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of
27 two hundred fifty dollars (\$250) per employee per violation in an initial violation
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1 and one thousand dollars (\$1,000) per employee for each violation in a subsequent
2 citation, for which the employer fails to provide the employee a wage deduction
3 statement or fails to keep the required in subdivision (a) of Section 226.”
4 Therefore, Defendants, and each of them, are liable to pay, and Plaintiff is entitled
5 to recover civil penalties on behalf of herself and all aggrieved employees pursuant
6 to this section for Defendants’ failure to provide accurate itemized wage
7 statements.
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9 22. Further, Plaintiff, as an Aggrieved Employee, need not
10 demonstrate or prove that Defendants conduct in refusing to provide accurate
11 and itemized wage statements was knowing, intentional, or willful. *Lopez v.*
12 *Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788, (2017), (“Consistent with
13 the PAGA statutory framework and the plain language and legislative history
14 of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a
15 violation of section 226(a) does not have to satisfy the “injury” and “knowing
16 and intentional” requirements of section 226(e)(1).”); *see Willner v. Manpower*
17 *Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a
18 PAGA claim, “all [plaintiff] needs to establish is a violation of section 226(a),
19 which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765
20 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of
21 recovering PAGA penalties, one need only prove a violation of Section 226(a),
22 and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*,
23 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do
24 not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties
25 under § 2699(f) of PAGA.”).¹
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27 ¹ See also *York v. Starbucks Corp.*, No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *2 (C.D. Cal. Nov.
28 1, 2012) (granting summary adjudication to the plaintiff on his PAGA claim based upon violations of Lab.
Code § 226(a) because “the presence or absence of injury is irrelevant to the standing inquiry under PAGA.”)

23. Additionally, Plaintiff and all aggrieved employees will seek to recover statutory penalties as well as an award of reasonable attorneys' fees and costs pursuant to Cal. Labor Code §§ 226(h).

24. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, et seq. because of Defendants violations of Labor Code §§ 226, 226.7, 512, and IWC Wage Order No. 1-2001 Section 11 - 12.

25. Further, an employee who prevails in a PAGA action is entitled to recover his or her reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §2699(g).

SECOND CAUSE OF ACTION

Unfair Business Practices in Violation of Cal. Business & Prof. Code §§ 17200, et seq.

(Against All Defendants)

26. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in the paragraphs above.

27. Cal. Bus. & Prof. Code § 17200 provides: "As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising [or] act[.]" An action under § 17200 for injunctive relief and disgorgement of ill-gotten

Pelton v. Panda Restaurant Group, Inc. (C.D. Cal., May 3, 2011, CV 10-8458 MANx) 2011 WL 1743268 ("[T]he Court rejects CPS's argument that plaintiff 'lacks any PAGA injury.' Pursuant to Cal. Labor Code § 2699, 'any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ... may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.' Sections 2699.5 and 2699.3(a) provide that such a claim may be brought for a violation of § 226(a) . . ."); *accord Lopez v. G.A.T. Airline Ground Support, Inc.* (S.D. Cal., July 19, 2010, 09-CV-2268-IEG) 2010 WL 2839417, *5-6 ("It is undisputed that GAT's paychecks do not indicate the applicable hourly rate of pay for the employee's regular rate, overtime rate, or double-time rate of pay...The failure to provide this information violates Section 226(a)... Because Section 226 does not provide a penalty, Section 2699(f) penalties are available.").

gains may be brought “by any person acting for the interests of itself, its members or the general public,” even if the person has not been personally harmed by the prohibited conduct. *See also Herr v. Nestle U.S.A., Inc.*, 03 C.D.O.S. 50432 (June 12, 2003).

28. Defendants, and each of them, are "persons" as defined under Business and Professions Code § 17021.35. Each of the directors, officers and/or agents of Wellington Foods, Inc., and DOES 1-100; are equally responsible for the acts of the others as set forth in Business and Professions Code §17095.

29. Defendant Wellington Foods, Inc., owns, operates, and manufacturers liquid and powder based nutritional supplements and products for various brands in the nutritional supplement industry and is therefore a covered entity as defined in Business and Professions Code §§ 17021 and 17024.

30. Defendants’ violations of the Labor Code and other laws and regulations including their multiple violations of the California Labor Code, constitute unfair business practices in violation of the Unfair Competition Law, Business & Professions Code § 17200, *et seq.*

31. Shareholders, owners, directors, officers, managing agents and/or sole proprietors misappropriated and converted to themselves for their individual advantage the wages and other monies owed to Plaintiff as alleged throughout the complaint.

32. Under Unfair Competition Law, employer's failure to pay earned wages was an unlawful business practice. [*Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163] A UCL claim may be predicated on a practice of not paying premium wages for missed, shortened, or delayed meal breaks

1 attributable to the employer's instructions or undue pressure, and unaccompanied
2 by a suitable employee waiver or agreement. [*Safeway Inc. v. Superior Court* 238
3 Cal. App. 4th 1138 (2015)] Defendant's violations of the Labor Code, including the
4 denial of compliant meal breaks, failure to pay the premium wage as a result of the
5 non-compliant meal breaks, and failure to provide accurate wage statements to
6 employees constitute unfair business practices in violation of the Unfair
7 Competition Law, Business & Professions Code § 17200, *et seq.*

9 33. As a result of Defendant's unfair business practices, Defendants have
10 reaped unfair benefits and illegal profits at the expense of Plaintiff and all
11 aggrieved employees, and ultimately to members of the public. Defendants'
12 utilization of such unfair business practices constitutes unfair competition and
13 provides an unfair advantage over Defendants' competitors.

14 34. For the aforesaid acts and omissions of Defendants, and each of
15 them, Plaintiff is entitled to seek preliminary and permanent injunctive relief,
16 including but not limited to, orders that the Defendants account for, disgorge and
17 restore to Plaintiff the compensation unlawfully withheld and for which they were
18 unjustly enriched.

19 35. Pursuant to Business and Professions Code § 17203, Plaintiff will
20 seek restitution and/or disgorgement of all monies wrongfully retained by
21 Defendants in violation of Business and Professions Code § 17000 *et seq.* and
22 17200 *et seq.*

23 36. By engaging in violations of well settled public policies codified in
24 California statutes, Defendants sought to chill the freedom of speech without
25 retribution, for the purpose of avoiding liability to Defendants' sole benefit. As
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1 such, Plaintiff's claims seek to vindicate the important public rights of free speech
2 and equal protection of the laws which confer a significant benefit on California
3 taxpayers and all American citizens. The financial benefit to Plaintiff is far less
4 than to the public at large since Plaintiff's damages are limited by statute. Based
5 thereon, Plaintiff is entitled to reasonable attorney's fees pursuant to C.C.P.
6 §1021.5.
7

8 **PRAYER**

9 WHEREFORE, the Plaintiff seeks judgment as follows:
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11 1. That the Plaintiff be awarded all costs and litigation expenses incurred
12 in bringing this action;

13 2. Civil Penalties pursuant to Labor Code Private Attorney General Act of
14 2004 against Defendants for Plaintiff and for all Aggrieved Employees for each
15 initial and subsequent violations as specified in Plaintiff's Seventeenth Cause of
16 Action, namely:

17 a. A civil penalty against Defendants in the amount of \$100 for the
18 initial violation and \$200 for each subsequent violation as specified
19 in section 2699(f)(2) of the California Labor Code for Plaintiff and
20 all aggrieved employees for each and every pay period during that
21 occurred between December 7, 2019 and the date of judgment
22 and/or approval of settlement for each violation of Labor Code §§
23 226.7 and 512;

24 b. A civil penalty in the amount of \$250 per employee per violation for
25 the initial violation and \$1000 per employee per violation for each
26 subsequent violation as specified by Labor Code §§ 2699 (f) and
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226.3 of the for each and every pay period during that occurred between December 7, 2019 and the date of judgment and/or approval of settlement for violations of Labor Code § 226(a);

c. A civil penalty in the amount of \$50 for the initial violation and \$100 for each subsequent violation as specified by Labor Code §§ 2699 (f) and Section 20 of the IWC Order No. 1-2001 for each and every pay period during that occurred between December 7, 2019 and the date of judgment and/or approval of settlement for violations of Section 11 of the Industrial Welfare Commission Order No. 1-2001;

d. An award of reasonable attorney's fees against Defendants as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims;

e. An award of all costs incurred by the undersigned counsel for Plaintiff in connection with Plaintiff's and the aggrieved employees' claims against Defendants as provided for in Labor Code § 2699(g)(1).

3. For reasonable attorneys' fees and costs incurred in bringing this action as follows for Plaintiff's Second Cause of Action pursuant to Cal. Code Civ. Proc. § 1021.5;

4. For general damages, according to proof, including in the amount of all unpaid and wrongfully withheld wages, including premium wages;

5. Damages, statutory penalties and/or interest pursuant to Cal. Labor Code §§ 226, 226.7, 512, and Section 20 of IWC Wage Order 1-2001;

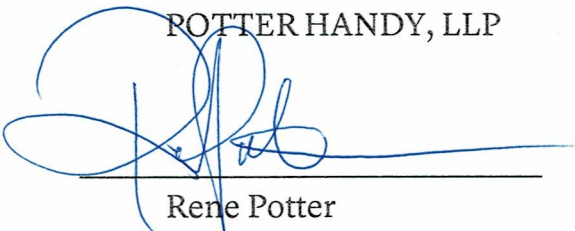
1 6. Restitution and/or disgorgement of all profits and monies wrongfully
2 retained by Defendants in violation of Business and Professions Code § 17000 et
3 seq. and 17200 et seq., pursuant to Business and Professions Code § 17203;

4 7. Injunctive Relief; and

5 8. For such other and further relief as the Court deems just and proper.
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10 Dated: March 16, 2021

POTTER HANDY, LLP



Rene Potter

Attorneys for Plaintiff, YOLANDA
ESPARZA