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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN BERNARDINO

13 DESIRAE TORRES, individually, and on
14 behalf of other members of the general
15 public similarly situated,

15 Plaintiff,

16 vs.

17 GH DAIRY, an unknown business entity;
18 and DOES 1 through 10, inclusive,

19 Defendants.

Case No.: CIV SB 2028215

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code § 227.3 (Failure to Pay Vested Vacation Time and Paid Time Off Upon Termination);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);

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- (8) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

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

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court because Defendants employ persons in this
5 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
6 and occurrences related to this action occurred in this county.

7 THE PARTIES

8 4. Plaintiff Desirae Torres is a resident of Rancho Cucamonga, in San Bernardino
9 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt
10 Administrative Assistant from approximately December 2018 to April 2020. During her
11 employment, Plaintiff typically worked eight (8) hours or more per day, five (5) days per
12 week, from 8:00 a.m. to 7:00 p.m. Plaintiff's primary job duties included, without limitation,
13 filing paperwork, copying checks and related documents, conducting data entry, verifying
14 vehicle load weights, ordering supplies from vendors, and distributing equipment and supplies
15 to farm workers.

16 5. GH DAIRY was and is, upon information and belief, an unknown business
17 entity, and at all times hereinafter mentioned, an employer whose employees are engaged
18 throughout this county, the State of California, or the various states of the United States of
19 America.

20 6. Plaintiff is unaware of the true names or capacities of the Defendants sued
21 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
22 amend the complaint and serve such fictitiously named Defendants once their names and
23 capacities become known.

24 7. Plaintiff is informed and believe, and thereon allege, that DOES 1 through 10
25 were the partners, agents, owners, or managers of GH DAIRY at all relevant times.

26 8. Plaintiff is informed and believe, and thereon allege, that each and all of the
27 acts and omissions alleged herein was performed by, or is attributable to, GH DAIRY and/or
28 DOES 1 through 10 (collectively, "Defendants" or "GH DAIRY"), each acting as the agent,

1 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
2 Defendants and was acting within the course and scope of such agency, employment, joint
3 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any
4 and all Defendants were in accordance with, and represent, the official policy of Defendants.

5 9. At all relevant times, Defendants, and each of them, ratified each and every act
6 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
7 and abetted the acts and omissions of each and all the other Defendants in proximately causing
8 the damages herein alleged.

9 10. Plaintiff is informed and believe, and thereon allege, that each of said
10 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
11 omissions, occurrences, and transactions alleged herein.

12 **GENERAL ALLEGATIONS**

13 11. Defendants provide dairy processing and distribution services to related dairy
14 agricultural operations. Upon information and belief, Defendants maintain a single,
15 centralized Human Resources ("HR") department at their company headquarters in Ontario,
16 California, which is responsible for the recruiting and hiring of new employees, and
17 communicating and implementing Defendants' company-wide policies, including timekeeping
18 policies and meal and rest period policies, to employees throughout California.

19 12. In particular, Plaintiff and class members, on information and belief, received
20 the same standardized documents and/or written policies. Upon information and belief, the
21 usage of standardized documents and/or written policies, including new-hire documents,
22 indicate that Defendants dictated policies at the corporate level and implemented them
23 company-wide, regardless of their employees' assigned locations or positions. Upon
24 information and belief, Defendants set forth uniform policies and procedures in several
25 documents provided at an employee's time of hire.

26 13. Upon information and belief, Defendants maintain a centralized Payroll
27 department at their company headquarters in Ontario, California, which processes payroll for
28 all non-exempt, hourly paid employees working for Defendants at their various locations and

1 jobsites in California, including Plaintiff and class members. Based upon information and
2 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
3 employees in California, irrespective of their work locations. Upon information and belief,
4 Defendants process payroll for departing employees in the same manner throughout the State
5 of California, regardless of the manner in which each employee's employment ends.

6 14. Defendants continue to employ non-exempt or hourly paid employees in
7 California.

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

12 16. Plaintiff is informed and believe, and thereon alleges, that Plaintiff and class
13 members were not paid for all hours worked because all hours worked were not recorded.

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

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

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

1 receive a timely, uninterrupted, thirty (30) minute meal period.

2 20. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to rest periods in
4 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
5 additional hour of pay at their regular rates of pay when they were not authorized and
6 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
7 and class members were not authorized and permitted to take compliant rest periods, nor did
8 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
9 pay at their regular rates of pay when they were not authorized and permitted to take a
10 compliant rest period.

11 21. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to receive complete and
13 accurate wage statements in accordance with California law. In violation of the California
14 Labor Code, Plaintiff and class members were not provided complete and accurate wage
15 statements.

16 22. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
17 should have known that they had a duty to maintain accurate and complete payroll records in
18 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
19 and intentionally failed to do so.

20 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to payment of all vested
22 vacation wages upon termination of employment. In violation of the California Labor Code,
23 Plaintiff and class members did not receive payment of all vested vacation wages due.

24 24. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to timely payment of all
26 wages earned upon termination of employment. In violation of the California Labor Code,
27 Plaintiff and class members did not receive payment of all wages due, including, but not
28 limited to, overtime wages, minimum wages, vested vacation wages, and/or meal and rest

1 period premiums, within permissible time periods.

2 25. Plaintiff is informed and believe, and thereon allege, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to timely payment of wages
4 during their employment. In violation of the California Labor Code, Plaintiff and class
5 members did not receive payment of all wages, including, but not limited to, overtime wages,
6 minimum wages, and/or meal and rest period premiums, within permissible time periods.

7 26. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to receive full
9 reimbursement for all business-related expenses and costs they incurred during the course and
10 scope of their employment and that they did not receive full reimbursement of applicable
11 business-related expenses and costs incurred.

12 27. Plaintiff is informed and believe, and thereon alleges, that at all times herein
13 mentioned, Defendants knew or should have known that Defendants had a duty to provide
14 Plaintiff and class members with written notice of the material terms of their employment with
15 Defendants as required by the California Wage Theft Prevention Act, but willfully,
16 knowingly, and intentionally failed to do so.

17 28. Plaintiff is informed and believe, and thereon allege, that at all times herein
18 mentioned, Defendants knew or should have known that they had a duty to compensate
19 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
20 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
21 falsely represented to Plaintiff and class members that they were properly denied wages, all in
22 order to increase Defendants' profits.

23 **PAGA REPRESENTATIVE ALLEGATIONS**

24 29. At all times herein set forth, PAGA provides that any provision of law under
25 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
26 assessed and collected by the LWDA for violations of the California Labor Code and
27 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
28 civil action brought on behalf of themselves and other current or former employees pursuant

1 to procedures outlined in California Labor Code section 2699.3.

2 30. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
3 person who was employed by the alleged violator and against whom one or more of the
4 alleged violations was committed.”

5 31. Plaintiff and other current and former employees of Defendants are “aggrieved
6 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
7 or former employees and one or more of the alleged violations were committed against them.

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

- 11 (a) The aggrieved employee or representative shall give written notice by
12 online filing with the LWDA and by certified mail to the employer of
13 the specific provisions of the California Labor Code alleged to have
14 been violated, including the facts and theories to support the alleged
15 violation.
- 16 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
17 2699.3(a) and any employer response to that notice shall be
18 accompanied by a filing fee of seventy-five dollars (\$75).
- 19 (c) The LWDA shall notify the employer and the aggrieved employee or
20 representative by certified mail that it does not intend to investigate the
21 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
22 the postmark date of the aggrieved employee’s notice. Upon receipt of
23 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
24 (65) calendar days of the postmark date of the aggrieved employee’s
25 notice, the aggrieved employee may commence a civil action pursuant
26 to California Labor Code section 2699 to recover civil penalties.

27 33. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
28 through Plaintiff, may pursue a civil action arising under PAGA for violations of any

1 provision other than those listed in Section 2699.5 after the following requirements have been
2 met:

- 3 (a) The aggrieved employee or representative shall give written notice by
4 online filing with the LWDA and by certified mail to the employer of
5 the specific provisions of the California Labor Code alleged to have
6 been violated (other than those listed in Section 2699.5), including the
7 facts and theories to support the alleged violation.
- 8 (b) An aggrieved employee's notice filed with the LWDA pursuant to
9 2699.3(c) and any employer response to that notice shall be
10 accompanied by a filing fee of seventy-five dollars (\$75).
- 11 (c) The employer may cure the alleged violation within thirty-three (33)
12 calendar days of the postmark date of the notice sent by the aggrieved
13 employee or representative. The employer shall give written notice
14 within that period of time by certified mail to the aggrieved employee or
15 representative and by online filing with the LWDA if the alleged
16 violation is cured, including a description of actions taken, and no civil
17 action pursuant to Section 2699 may commence. If the alleged violation
18 is not cured within the 33-day period, the aggrieved employee may
19 commence a civil action pursuant to Section 2699.

20 34. On December 7, 2020, Plaintiff provided written notice by online filing to the
21 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
22 Code alleged to have been violated, including facts and theories to support the alleged
23 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
24 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
25 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
26 Plaintiff PAGA Case Number LWDA-CM-814595-20. A true and correct copy of Plaintiff's
27 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

28 35. As of the filing date of this complaint, over 65 days have passed since Plaintiff

1 sent the notice described above to the LWDA, and the LWDA has not responded that it
2 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

3 36. Thus, Plaintiff has satisfied the administrative prerequisites under California
4 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
5 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510,
6 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

19 39. As set forth below, Defendants have violated numerous provisions of both the
20 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
21 Order.

22 40. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
23 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
24 private attorney general, seeks assessment and collection of civil penalties for herself, all other
25 aggrieved employees, and the State of California against Defendants for violations of
26 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 516,
27 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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1 **CLASS ACTION ALLEGATIONS**

2 41. Plaintiff brings this action on her own behalf, as well as on behalf of each and
3 all other persons similarly situated, and thus seek class certification under California Code of
4 Civil Procedure section 382.

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

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

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

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

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

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

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

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

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

- 1 members to take rest periods;
- 2 (e) Whether Defendants provided Plaintiff and class members with
- 3 complete and accurate wage statements as required by California Labor
- 4 Code section 226(a);
- 5 (f) Whether Defendants maintained accurate payroll records as required by
- 6 California Labor Code section 1174(d);
- 7 (g) Whether Defendants failed to pay Plaintiff and class members all vested
- 8 vacation time as wages at their final rate in accordance with the terms
- 9 and conditions of Defendants' employment contract and/or policy;
- 10 (h) Whether Defendants failed to pay earned overtime wages, minimum
- 11 wages, vested vacation wages, and/or meal and rest period premiums,
- 12 due to Plaintiff and class members upon their discharge;
- 13 (i) Whether Defendants failed timely to pay overtime wages, minimum
- 14 wages, and/or meal and rest period premiums, to Plaintiff and class
- 15 members during their employment;
- 16 (j) Whether Defendants failed to reimburse Plaintiff and class members for
- 17 necessary and required business-related expenditures and/or losses
- 18 incurred by them in the scope of their employment;
- 19 (k) Whether Defendants failed to provide written notice of information
- 20 material to Plaintiff's and class members' employment with Defendants;
- 21 (l) Whether Defendants engaged in unlawful and unfair business practices
- 22 in violation of California Business & Professions Code sections 17200,
- 23 *et seq.*; and
- 24 (m) The appropriate amount of damages, restitution, or monetary penalties
- 25 resulting from Defendants' violations of California law.

26 48. There is a well-defined community of interest in the litigation and the class

27 members are readily ascertainable:

- 28 (a) Numerosity: The class members are so numerous that joinder of all

1 members would be unfeasible and impractical. The membership of the
2 entire class is unknown to Plaintiff at this time; however, the class is
3 estimated to be greater than one hundred (100) individuals and the
4 identity of such membership is readily ascertainable by inspection of
5 Defendants' employment records.

6 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
7 protect the interests of each class member with whom she has a well-
8 defined community of interest, and Plaintiff's claims (or defenses, if
9 any) are typical of all class members as demonstrated herein.

10 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
11 protect the interests of each class member with whom she has a well-
12 defined community of interest and typicality of claims, as demonstrated
13 herein. Plaintiff acknowledges that she has an obligation to make
14 known to the Court any relationship, conflicts or differences with any
15 class member. Plaintiff's attorneys, the proposed class counsel, are
16 versed in the rules governing class action discovery, certification, and
17 settlement. Plaintiff has incurred, and throughout the duration of this
18 action, will continue to incur costs and attorneys' fees that have been,
19 are, and will be necessarily expended for the prosecution of this action
20 for the substantial benefit of each class member.

21 (d) Superiority: The nature of this action makes the use of class action
22 adjudication superior to other methods. A class action will achieve
23 economies of time, effort, and expense as compared with separate
24 lawsuits, and will avoid inconsistent outcomes because the same issues
25 can be adjudicated in the same manner and at the same time for the
26 entire class.

27 (e) Public Policy Considerations: Employers in the State of California
28 violate employment and labor laws every day. Current employees are

1 often afraid to assert their rights out of fear of direct or indirect
2 retaliation. Former employees are fearful of bringing actions because
3 they believe their former employers might damage their future
4 endeavors through negative references and/or other means. Class
5 actions provide the class members who are not named in the complaint
6 with a type of anonymity that allows for the vindication of their rights
7 while simultaneously protecting their privacy.

8 **FIRST CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 10 **(Against all Defendants)**

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

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

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

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

27 53. The applicable IWC Wage Order further provides that Defendants are and were
28 required to pay Plaintiff and class members working more than twelve (12) hours in a day,

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

4 54. California Labor Code section 510 codifies the right to overtime compensation
5 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
6 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
7 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
8 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
9 in a day on the seventh (7th) day of work.

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

15 56. First, upon information and belief, Defendants' timekeeping system did not
16 always register and calculate overtime hours and wages correctly when Plaintiff and class
17 members inputted their hours. For example, during the pay period of April 11 through April
18 24, 2020, Defendants' timekeeping records show that Plaintiff input more than eight (8) hours
19 as "Regular" time on some days during the period, and worked more than 40 hours during a
20 week, but was not paid overtime wages for the hours exceeding eight (8) hours per day or 40
21 hours per week. Specifically, during the week of April 18 through April 24, 2020, Plaintiff
22 logged nine (9) hours for each shift for a total of 45 hours for the week, but her pay records
23 indicate she was paid only straight time and not overtime wages. Thus, on information and
24 belief, Plaintiff was not paid at an overtime rate for hours worked over eight (8).

25 57. Second, during the relevant time period, Defendants had, and continue to have,
26 a company-wide policy and/or practice of understaffing their locations while assigning heavy
27 workloads, resulting in a failure to provide Plaintiff and class members with adequate meal
28 period coverage. Plaintiff and class members worked through meal periods or had their meal

1 periods cut short or interrupted because there were not enough employees on duty to handle
2 the workload. For example, approximately three (3) times per week, Plaintiff would have her
3 meal periods interrupted in-person by Defendants' management requiring her assistance with
4 retrieving items for Defendants' agricultural workers who were picking up supplies for
5 farming and livestock maintenance. Defendants knew or should have known that Plaintiff and
6 class members were being made to complete assigned duties during their meal periods, but
7 failed to compensate them for this off-the-clock work.

8 58. Moreover, Defendants had a practice of failing to schedule meal periods, which
9 further caused Plaintiff and class members to not be relieved of their duties for compliant
10 meal periods. Further, on information and belief, because Defendants frowned upon
11 employees accruing meal period penalties, when Plaintiff and class members failed to clock
12 themselves out at designated meal period start times, they were subject to Defendants
13 adjusting their time records to reflect compliant meal periods, regardless of whether they had
14 received a compliant meal period, in order to strictly limit meal penalties that Defendants
15 would otherwise owe. Thus, Plaintiff and class members performed work during unpaid meal
16 periods and received no compensation for this time.

17 59. Third, Defendants had, and continue to have, a company-wide policy and/or
18 practice of requiring Plaintiff and class members to perform tasks off-the-clock. For example,
19 Plaintiff regularly spent 1-2 hours after her shifts retrieving items/inventory and distributing
20 requested farming equipment or medical supplies for livestock to Defendants' agricultural
21 workers. Defendants failed to track this time Plaintiff and class members spent assisting with
22 such tasks, and thus, Plaintiff and class members received no compensation for this time.

23 60. Moreover, on information and belief, Defendants engaged in a policy and/or
24 practice of altering Plaintiff's and class members' time records at the discretion of
25 management. For example, Defendants' management would adjust Plaintiff's and class
26 members' time records and delete time recorded past their scheduled shifts, or move some
27 hours worked to different days to reduce or eliminate overtime wages they would otherwise be
28 required to pay. As a result of Defendants' policy and/or practice, Plaintiff and class members

1 were not paid overtime wages for all overtime hours they actually worked.

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

9 62. Defendants' failure to pay Plaintiff and class members the balance of overtime
10 compensation as required by California law, violates the provisions of California Labor Code
11 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
12 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
13 and attorneys' fees.

14 **SECOND CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 16 **Minimum Wages** 17 **(Against all Defendants)**

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

20 64. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
21 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
22 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
23 fixed is unlawful. Compensable work time is defined in the applicable Wage Order as "the
24 time during which an employee is subject to the control of an employer, and includes all the
25 time the employee is suffered or permitted to work, whether or not required to do so."

26 65. As stated, due to Defendants' policies and/or practices of understaffing while
27 assigning heavy workloads, failure to schedule meal periods, and resultant lack of meal period
28 coverage, Plaintiff and class members were forced to forego meal periods, have their meal

1 periods interrupted, and/or were otherwise not relieved of all duties during meal periods.
2 Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon
3 information and belief, Defendants' management adjusted employee time records to reflect
4 compliant meal periods, but required employees to continue working, time for which they
5 were not paid. In addition, as set forth above, Defendants required Plaintiff and class
6 members to perform work off-the-clock, such as storing inventory, processing milk tickets, or
7 assisting agricultural workers who were picking up supplies for farming and livestock
8 maintenance, but did not compensate them for this time.

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

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

18 **THIRD CAUSE OF ACTION**

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

20 **Violations**

21 **(Against all Defendants)**

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

24 69. At all relevant times herein set forth, California Labor Code section 512(a)
25 provides that an employer may not require, cause, or permit an employee to work for a period
26 of more than five (5) hours per day without providing the employee with a meal period of not
27 less than thirty (30) minutes, except that if the total work period per day of the employee is
28 not more than six (6) hours, the meal period may be waived by mutual consent of both the

1 employer and the employee. Under California law, first meal periods must start after no more
2 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
3 2012).

4 70. At all relevant times herein set forth, California Labor Code sections 226.7,
5 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
6 meal period mandated by an applicable order of the IWC.

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

13 72. During the relevant time period, as stated, Defendants had, and continue to
14 have, a company-wide policy and/or practice of understaffing while assigning heavy
15 workloads. As a result, Plaintiff and class members would be forced to work in excess of five
16 (5) hours before taking a meal period, have their meal periods interrupted, and/or had to forgo
17 their meal periods altogether. Additionally, as stated, Defendants had a company-wide
18 practice of failing to schedule meal periods, which further caused Plaintiff and class members
19 to not be relieved of their duties for compliant meal periods. For example, during her
20 employment, Plaintiff typically took meal periods after the end of her fifth hour of work
21 because her workload was heavier in the mornings. Plaintiff's supervisors interrupted her
22 meal periods on a daily basis to discuss work-related matters or to ask Plaintiff to assist
23 agricultural workers who were picking up supplies for farming or livestock maintenance. In
24 addition, Plaintiff missed her meal periods once per week because there were not enough
25 employees to assist agricultural workers who were picking up supplies.

26 73. Furthermore, on information and belief, because Defendants frowned upon
27 employees accruing meal period penalties, Defendants' management would adjust Plaintiff's
28 and class members' time records to reflect compliant meal periods, regardless of whether they

1 had received a compliant meal period or not, in order to strictly limit meal penalties that
2 would need to be paid by Defendants.

3 74. Additionally, Defendants did not schedule second meal periods and had no
4 policy for permitting Plaintiff and class members to take second 30-minute meal periods on
5 days that they worked in excess of ten (10) hours in one day. For example, Plaintiff would
6 work in excess of ten (10) hours per day, and was not provided her second meal period during
7 these shifts. Plaintiff and class members did not sign valid meal period waivers on days that
8 they were entitled to meal periods and were not relieved of all duties.

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

16 76. Defendants' conduct violates the applicable IWC Wage Order, and California
17 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
18 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
19 rate of compensation for each work day that the meal period was not provided.

20 **FOURTH CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 22 **(Against all Defendants)**

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

25 78. At all relevant times herein set forth, the applicable IWC Wage Order and
26 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
27 members' employment by Defendants.

28 79. At all relevant times, the applicable IWC Wage Order provides that "[e]very

1 employer shall authorize and permit all employees to take rest periods, which insofar as
2 practicable shall be in the middle of each work period” and that the “rest period time shall be
3 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
4 hours or major fraction thereof” unless the total daily work time is less than three and one-half
5 (3½) hours.

6 80. At all relevant times, California Labor Code section 226.7 provides that no
7 employer shall require an employee to work during any rest period mandated by an applicable
8 order of the California IWC. To comply with its obligation to authorize and permit rest
9 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
10 employer must “relinquish any control over how employees spend their break time, and
11 relieve their employees of all duties—including the obligation that an employee remain on
12 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
13 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
14 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
15 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
16 that a required rest period was not authorized and permitted.

17 81. During the relevant time period, Defendants regularly failed to authorize and
18 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
19 period worked or major fraction thereof. As with meal periods, Defendants’ policies and/or
20 practices of understaffing and assigning heavy workloads prevented Plaintiff and class
21 members from being relieved of all duty in order to take compliant rest periods. Defendants
22 also failed to schedule rest periods, which, coupled with Defendants’ failure to provide
23 adequate rest period coverage, further led to Plaintiff and class members not being authorized
24 and permitted to take rest periods.

25 82. Furthermore, upon information and belief, during the relevant time period,
26 Defendants maintained and implemented a company-wide on-premises rest period policy,
27 which mandated that Plaintiff and class members remain on the work premises during their
28 rest periods. Because Plaintiff and class members were restricted from leaving the premises

1 during rest periods, they were denied the ability to use their rest periods freely for their own
2 purposes. Thus, Defendants effectively maintained control over Plaintiff and class members
3 during rest periods.

4 83. As a result of Defendants' practices and policies, Plaintiff and class members
5 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
6 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
7 Plaintiff frequently worked through her shifts without taking her 10-minute rest periods due to
8 the workload, lack of coverage, and failure to schedule rest periods.

9 84. Defendants have also engaged in a company-wide policy and/ or practice of not
10 paying all rest period premiums owed when compliant rest periods are not authorized and
11 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
12 to pay them rest period premium wages due, in violation of Labor Code section 226.7, 516,
13 and the applicable IWC Wage Order.

14 85. Defendants' conduct violates the applicable IWC Wage Order and California
15 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
16 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
17 compensation for each work day that a compliant rest period was not authorized and
18 permitted.

19 **FIFTH CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 21 **Statements and Failure to Maintain Accurate Payroll Records** 22 **(Against all Defendants)**

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

25 87. At all relevant times herein set forth, California Labor Code section 226(a)
26 provides that every employer shall furnish each of his or her employees an accurate and
27 complete itemized wage statement in writing, including, but not limited to, the name and
28 address of the legal entity that is the employer, the inclusive dates of the pay period, total

1 hours worked, and all applicable rates of pay.

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

9 89. Because Defendants did not record the time Plaintiff and Subclass members
10 spent working off the clock and deducted time from their records for meal periods that were
11 missed (and therefore time for which they should have been paid), Defendants did not list the
12 correct amount of gross wages and net wages earned by Plaintiff and Subclass members in
13 compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to
14 accurately list the total number of hours worked by Plaintiff and Subclass members in
15 violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect
16 during the pay period and corresponding accurate number of work hours worked at each
17 hourly rate in violation of section 226(a)(9).

18 90. The wage statement deficiencies also include, without limitation, failing to list
19 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
20 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
21 only the last four digits of his or her social security number or an employee identification
22 number other than a social security number; failing to list the name and address of the legal
23 entity that is the employer; failing to list the inclusive dates of the period for which employees
24 were paid; and/or failing to state all hours worked as a result of not recording or stating hours
25 worked off-the-clock.

26 91. California Labor Code section 1198 provides that the maximum hours of work
27 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
28 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he

1 employment of any employees for longer hours than those fixed by the order or under
2 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
3 Wage Order, employers are required to keep accurate time records showing when the
4 employee begins and ends each work period and meal period. During the relevant time
5 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
6 and meal period start and stop times for Plaintiff and Subclass members, in violation of
7 section 1198. Also, as stated, Defendants engaged in a company-wide practice and/or policy
8 of falsifying Plaintiff’s and Subclass members’ time records by recording that compliant meal
9 periods were taken regardless of if or when meal periods were actually taken, and thereby
10 failed to keep accurate records of meal start and end times for Plaintiff and Subclass members.
11 Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass members with
12 second 30-minute meal periods to which they were entitled, Defendants kept no records of
13 meal start and end times for second meal periods.

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

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

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1 **SIXTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 227.3—Failure to Pay All Vested Vacation Time**
3 **and Paid Time Off Upon Termination**

4 **(Against all Defendants)**

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

7 95. At all relevant times herein set forth, California Labor Code section 227.3
8 provides that whenever a contract of employment or employer policy provides for paid
9 vacations, and an employee is terminated without having taken his or her vested vacation
10 time, all vested vacation shall be paid to him or her as wages at his or her final rate in
11 accordance with such contract of employment or employer policy respecting eligibility or time
12 served.

13 96. During the relevant time period, Defendants had a company-wide policy and
14 practice of failing to pay Plaintiff and class members vested vacation wages that were owed to
15 them at the end of their employment, in violation of California Labor Code section 227.3. For
16 example, upon information and belief, Defendants failed to pay Plaintiff the balance of her
17 accrued and unused vacation wages, which was 48 hours at the time of her resignation.

18 97. Defendants' failure to pay Plaintiff and class members who are no longer
19 employed by Defendants all vested vacation wages at the end of their employment caused a
20 forfeiture of vested vacation wages in violation of California Labor Code section 227.3.
21 Accordingly, Plaintiff and class members are entitled to recover from Defendants their unpaid
22 vested vacation wages due to them, plus interest.

23 **SEVENTH CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon**
25 **Termination**

26 **(Against all Defendants)**

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

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

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

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

17 102. Defendants' failure to pay Plaintiff and class members who are no longer
18 employed by Defendants their wages earned and unpaid at the time of discharge, or within
19 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
20 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
21 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
22 thirty (30) day maximum pursuant to California Labor Code section 203.

23 **EIGHTH CAUSE OF ACTION**

24 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
25 **Employment**
26 **(Against all Defendants)**

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

1 104. This cause of action is dependent upon, and wholly derivative of, the overtime
2 wages, minimum wages, and/or meal and rest period premium wages, that were not timely
3 paid to Plaintiff and class members during their employment.

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

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

14 107. At all times relevant herein, Labor Code section 204 provides that all wages
15 earned for labor in excess of the normal work period shall be paid no later than the payday for
16 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
17 204 provides that the requirements of this section are deemed satisfied by the payment of
18 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
19 seven (7) calendar days following the close of the payroll period.

20 108. During the relevant time period, Defendants willfully failed to pay Plaintiff and
21 class members all wages due including, but not limited to, overtime wages, minimum wages,
22 and/or meal and rest period premium wages, within the time periods specified by California
23 Labor Code section 204.

24 109. Defendants' failure to pay Plaintiff and class members all wages due violates
25 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
26 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

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1 **NINTH CAUSE OF ACTION**

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

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

6 111. At all times herein set forth, California Labor Code section 2802 provides that
7 an employer must reimburse employees for all necessary expenditures and losses incurred by
8 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
9 to prevent employers from passing off their cost of doing business and operating expenses on
10 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
11 (2014). The applicable wage order provides that: “[w]hen tools or equipment are required by
12 the employer or are necessary to the performance of a job, such tools and equipment shall be
13 provided and maintained by the employer, except that an employee whose wages are at least
14 two (2) times the minimum wage provided herein may be required to provide and maintain
15 hand tools and equipment customarily required by the trade or craft.”

16 112. During the relevant time period, Defendants had a company-wide policy of
17 requiring Plaintiff and class members to utilize their own personal cellular phones and cellular
18 data to carry out their job duties, but Defendants failed to reimburse them for the costs of their
19 work-related cellular phone expenses. For example, Plaintiff and class members were
20 required to use their personal cellular phones to complete work-related tasks, such as
21 discussing ongoing assignments with Defendants’ managers. Although Defendants required
22 Plaintiff and class members to utilize their personal cellular phones to carry out their work-
23 related responsibilities, Defendants failed to reimburse them for this cost.

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

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

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

TENTH CAUSE OF ACTION

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

(Against all Defendants)

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

117. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

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

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

- 1 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
2 applicable IWC wage order for Defendants' failure to provide Plaintiff
3 and other aggrieved employees with meal periods, as alleged herein;
- 4 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
5 IWC wage order for Defendants' failure to authorize and permit
6 Plaintiff and other aggrieved employees to take rest periods, as alleged
7 herein;
- 8 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
9 wage order for failure to provide accurate and complete wage statements
10 to Plaintiff and other aggrieved employees, as alleged herein;
- 11 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
12 IWC wage order for failure to maintain payroll records, as alleged
13 herein;
- 14 (g) Violation of Labor Code section 227.3 for failure to pay Plaintiff and
15 other aggrieved employees all vested vacation time upon termination as
16 set forth below, as alleged herein;
- 17 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
18 earned wages upon termination, as alleged herein;
- 19 (i) Violation of Labor Code section 204 for failure to pay all earned wages
20 during employment, as alleged herein;
- 21 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
22 and other aggrieved employees for all business expenses necessarily
23 incurred, as alleged herein; and
- 24 (k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
25 provide written notice of information material to Plaintiff and other
26 aggrieved employees' employment with Defendants, as set forth below.

27 119. At all relevant times herein, California Labor Code section 2810.5 provides that
28 at the time of hiring, an employer must provide written notice to employees containing basic

1 and material payroll information, including, among other things, the rate(s) of pay and basis
2 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
3 including any rates for overtime, the regular payday designated by the employer, and any
4 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
5 Code § 2810.5(a)(1)(A)-(C).

6 120. During the relevant time period, Defendants failed to provide other aggrieved
7 employees with written notice that lists all the requisite information set forth in Labor Code
8 section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and other aggrieved
9 employees with written notice of basic information regarding their employment with
10 Defendants is in violation of Labor Code section 2810.5. Plaintiff and other aggrieved
11 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
12 2699(a), (f), and (g).

13 **ELEVENTH CAUSE OF ACTION**

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

15 **Unlawful Business Practices**

16 **(Against all Defendants)**

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

19 122. Defendants are "persons" as defined by California Business & Professions
20 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
21 and/or associations.

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

27 124. Defendants' activities, as alleged herein, are violations of California law, and
28 constitute unlawful business acts and practices in violation of California Business &

1 Professions Code sections 17200, *et seq.*

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

- 5 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
6 class members, to work overtime without paying them proper
7 compensation in violation of California Labor Code sections 510 and
8 1198 and the applicable IWC Order, as alleged herein;
- 9 (b) Failing to pay at least minimum wage to Plaintiff and class members in
10 violation of California Labor Code sections 1182.12, 1194, 1197,
11 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 12 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
13 members in violation of California Labor Code sections 226.7, 512(a),
14 516, 1198, and the applicable IWC Order, as alleged herein;
- 15 (d) Failing to authorize and permit Plaintiff and class members to take
16 uninterrupted rest periods in violation of California Labor Code sections
17 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 18 (e) Failing to provide Plaintiff and class members with accurate wage
19 statements and failing to maintain accurate payroll records in violation
20 of California Labor Code sections 226(a), 1174(d), 1198, and the
21 applicable IWC Order, as alleged herein;
- 22 (f) Failing to pay all vested vacation wages to Plaintiff and class members
23 in violation of California Labor Code 227.3, as alleged herein;
- 24 (g) Failing timely to pay all earned wages to Plaintiff and class members in
25 violation of California Labor Code section 204 and the applicable IWC
26 Order, as alleged herein;
- 27 (h) Failing to reimburse Plaintiff and class members for all business
28 expenses necessarily incurred in violation of California Labor Code

1 sections 2802, as alleged herein; and

- 2 (i) Failing to provide written notice of information material to Plaintiff's
3 and class members' employment with Defendants in violation of Labor
4 Code section 2810.5(a)(1)(A)-(C), as set forth below.

5 126. At all relevant times herein, California's Wage Theft Prevention Act was
6 enacted to ensure that employers provide employees with basic information material to their
7 employment relationship at the time of hiring, and to ensure that employees are given written
8 and timely notice of any changes to basic information material to their employment. Codified
9 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
10 time of hiring, an employer must provide written notice to employees containing basic and
11 material payroll information, including, among other things, the rate(s) of pay and basis
12 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
13 including any rates for overtime, the regular payday designated by the employer, and any
14 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
15 Code § 2810.5(a)(1)(A)-(C).

16 127. At all relevant times, on information and belief, Defendants failed, on a
17 company-wide basis, to provide written notice to Plaintiff and class members that lists the
18 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
19 to provide Plaintiff and class members with written notice of basic information regarding their
20 employment with Defendants is in violation of Labor Code section 2810.5.

21 128. As a result of the violations of California law herein described, Defendants
22 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
23 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
24 herein.

25 129. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
26 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
27 Defendants during a period that commences four years prior to the filing of this complaint; a
28 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and

1 class members; and an award of attorneys' fees pursuant to California Code of Civil
2 Procedure section 1021.5 and other applicable laws; and an award of costs.

3 **TWELFTH CAUSE OF ACTION**

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

5 **Unfair Business Practices**

6 **(Against all Defendants)**

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

9 131. Defendants are "persons" as defined by California Business & Professions
10 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
11 and/or associations.

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

17 133. Defendants' activities, namely Defendants' company-wide practice and/or
18 policy of not paying Plaintiff and class members all meal and rest period premium wages due
19 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
20 compensation guarantee and enhanced enforcement implemented by section 226.7. The
21 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to
22 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
23 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
24 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
25 thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
26 unfair business practice in violation of California Business & Professions Code sections
27 17200, *et seq.* (Id.)

28 134. A violation of California Business & Professions Code sections 17200, *et seq.*

1 may be predicated on any unfair business practice. In the instant case, Defendants' policies
2 and practices have violated the spirit of California's meal and rest period laws and constitute
3 acts against the public policy behind these laws.

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

11 **REQUEST FOR JURY TRIAL**

12 Plaintiff requests a trial by jury.

13 **PRAYER FOR RELIEF**

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

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

19 **Class Certification**

- 20 2. That this case be certified as a class action;
21 3. That Plaintiff be appointed as the representative of the Class and Subclass;
22 4. That counsel for Plaintiff be appointed as class counsel.

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

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

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

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

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

5 9. For such other and further relief as the Court may deem equitable and
6 appropriate.

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

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

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

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

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

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

18 15. For such other and further relief as the Court may deem equitable and
19 appropriate.

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

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

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

27 18. For all actual, consequential, and incidental losses and damages, according to
28 proof;

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

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

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

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

As to the Fourth Cause of Action

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

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

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

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

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

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

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

As to the Fifth Cause of Action

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

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

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

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

5 34. For attorneys' fees and costs pursuant to California Labor Code section
6 226(e)(1); and

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

9 **As to the Sixth Cause of Action**

10 36. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code section 227.3 by willfully failing to pay vested vacation wages owed at the time
12 of termination of the employment of Plaintiff and other terminated class members;

13 37. For all actual, consequential and incidental losses and damages, according to
14 proofs;

15 38. For prejudgment interest on any unpaid wages from the date of such amounts
16 were due, or as otherwise provided by law

17 39. For attorneys' fees pursuant to California Code of Civil Procedure section
18 1021.5, or as otherwise provided by law; and

19 40. For such other and further relief as the Court may deem equitable and
20 appropriate.

21 **As to the Seventh Cause of Action**

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

26 42. For all actual, consequential and incidental losses and damages, according to
27 proof;

28 43. For waiting time penalties according to proof pursuant to California Labor

Code section 203 for all employees who have left Defendants' employ;

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

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

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

As to the Eighth Cause of Action

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

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

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

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

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

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

As to the Ninth Cause of Action

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

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

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

3 56. For all actual, consequential, and incidental losses and damages, according to
4 proof;

5 57. For attorneys' fees and costs pursuant to California Labor Code section
6 2802(c), or as otherwise provided by law; and

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

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

10 59. That the Court declare, adjudge and decree that Defendants violated the
11 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
12 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
13 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
14 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
15 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
16 statements and maintain accurate payroll records); 227.3 (by failing to pay all vested vacation
17 days upon termination); 201, 202, and 203 (by failing timely to pay all earned wages upon
18 termination); 204 (by failing timely to pay all earned wages during employment); 2802 (by
19 failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of
20 information material to employment);

21 60. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
22 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
23 sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 516, 1174(d), 1182.12, 1194,
24 1197, 1197.1, 1198, 2802, and 2810.5;

25 61. For attorneys' fees and costs pursuant to California Labor Code section
26 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
27 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 516, 1174(d),
28 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

1 62. For pre-judgment and post-judgment interest as provided by law; and
2 63. For such other and further relief as the Court may deem equitable and
3 appropriate.

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

5 64. That the Court declare, adjudge and decree that Defendants' conduct of failing
6 to provide Plaintiff and class members all overtime wages due to them, failing to provide
7 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
8 class members all meal periods, failing to authorize and permit Plaintiff and class members to
9 take all rest periods, failing to provide Plaintiff and class members accurate and complete
10 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
11 failing to pay all vested vacation wages, failing timely to pay Plaintiff and class members all
12 earned wages during employment, failing to reimburse Plaintiff and class members for
13 business-related expenses, and failing to provide written notice of information material to
14 employment to Plaintiff and class members, constitutes an unlawful business practice in
15 violation of California Business and Professions Code sections 17200, *et seq.*;

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

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

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

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

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

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

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

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

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

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

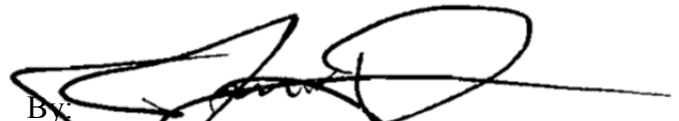
12 73. For pre-judgment and post-judgment interest as provided by law; and

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

15
16 Dated: February 15, 2021

Respectfully submitted,

Capstone Law APC

17
18
19 By: 

20 Robert Drexler
21 Molly DeSario
22 Jonathan Lee
23 Helga Hakimi

24 Attorneys for Plaintiff Desirae Torres

Exhibit 1

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

December 7, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/295>)

Subject: *Desirae Torres v. GH Dairy*

Dear PAGA Administrator:

This office represents Desirae Torres in connection with her claims under the California Labor Code. Ms. Torres was an employee of GH DAIRY.

The employer may be contacted directly at the address below:

GH DAIRY
14651 GROVE AVE
ONTARIO, CA 91762

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

GH DAIRY employed Ms. Torres as a non-exempt, hourly paid Administrative Assistant from approximately December 2018 to April 2020. During her employment, she typically worked eight (8) or more hours per day, five (5) days per week, from 8:00 a.m. to 7:00 p.m. At the time her employment ended, Ms. Torres was compensated approximately \$15.66 per hour. Her job duties included, without limitation, filing paperwork, copying checks and related documents, conducting data entry, verifying vehicle load weights, ordering supplies from vendors, and distributing equipment and supplies to farm workers.

GH DAIRY has committed one or more of the following Labor Code violations against Ms. Torres, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

GH DAIRY’s Company-Wide and Uniform Payroll and HR Practices

GH DAIRY is a business entity of unknown origin and provides dairy processing and distribution services to related dairy agricultural operations. Upon information and belief, GH DAIRY maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Ontario, California, for all non-exempt, hourly paid employees working for GH DAIRY in California, including Ms. Torres and other aggrieved employees. At all relevant times, GH DAIRY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Torres and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

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

First, during the relevant period, upon information and belief, GH DAIRY's timekeeping system did not always register and calculate overtime hours and wages correctly when Ms. Torres and other aggrieved employees inputted their hours. For example, during the pay period of April 11 through April 24, 2020, GH DAIRY's timekeeping records show that Ms. Torres input more than eight (8) hours as "Regular" time on some days during the period, and worked more than 40 hours during a week, but was not paid overtime wages for the hours exceeding eight (8) hours per day or 40 hours per week. Specifically, during the week of April 18 through April 24, 2020, Ms. Torres logged nine (9) hours for each shift for a total of 45 hours for the week, but her pay records indicate she was paid only straight time and not overtime wages. Thus, on information and belief, Ms. Torres was not paid at an overtime rate for hours worked over eight (8).

Second, during the relevant time period, GH DAIRY had, and continues to have, a company-wide policy and/or practice of understaffing its locations while assigning heavy workloads, resulting in a failure to provide Ms. Torres and other aggrieved employees with adequate meal period coverage. Ms. Torres and other aggrieved employees worked through meal periods or had their meal periods cut short or interrupted because there were not enough employees on duty to handle the workload. For example, approximately three (3) times per week, Ms. Torres would have her meal periods interrupted in-person by GH DAIRY's management requiring her assistance with retrieving items for GH DAIRY's agricultural workers who were picking up supplies for farming and livestock maintenance. GH DAIRY knew or should have known that Ms. Torres and other aggrieved employees were being made to complete assigned duties during their meal periods, but failed to compensate them for this off-the-clock work.

Moreover, GH DAIRY had a practice of failing to schedule meal periods, which further caused Ms. Torres and other aggrieved employees to not be relieved of their duties for compliant meal periods. Further, on information and belief, because GH DAIRY frowned upon employees accruing meal period penalties, when Ms. Torres and other aggrieved employees failed to clock themselves out at designated meal period start times, they were subject to GH DAIRY adjusting their time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that GH DAIRY would otherwise owe. Thus, Ms. Torres and other aggrieved employees performed work during unpaid meal periods and received no compensation for this time.

Third, GH DAIRY had, and continues to have, a company-wide policy and/or practice of requiring Ms. Torres and other aggrieved employees to perform tasks off-the-clock. For example, Ms. Torres regularly spent 1-2 hours after her shifts retrieving items/inventory and distributing requested farming equipment or medical supplies for livestock to GH DAIRY's agricultural workers. GH DAIRY failed to track this time Ms. Torres and other aggrieved employees spent assisting with such tasks, and thus, Ms. Torres and other aggrieved employees received no compensation for this time.

Furthermore, on information and belief, GH DAIRY engaged in a policy and/or practice of altering Ms. Torres's and other aggrieved employees' time records at the discretion of management. For example, GH DAIRY's management would adjust Ms. Torres's and other aggrieved employees' time records and delete time recorded past their scheduled shifts, or move some hours worked to different days to reduce or eliminate overtime wages they would otherwise be required to pay. As a result of GH DAIRY's policy and/or practice, Ms. Torres and other aggrieved employees were not paid overtime wages for all overtime hours they actually worked.

GH DAIRY knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Torres and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. GH DAIRY also knew, or should have known, that it did not compensate Ms. Torres and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Ms. Torres and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Torres and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. GH DAIRY's failure to pay Ms. Torres and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

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

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in the applicable wage order as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

As stated above, during the relevant time period, due to GH DAIRY's policies and/or practices of understaffing while assigning heavy workloads, failure to schedule meal periods, and resultant lack of meal period coverage, Ms. Torres and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, GH DAIRY's management adjusted employee time records to reflect compliant meal periods, but required employees to continue working, time for which they were not paid. In addition, as set forth above, GH DAIRY required Ms. Torres and other aggrieved employees to perform work off-the-clock, such as storing inventory, processing milk tickets, or assisting agricultural workers who were picking up supplies for farming and livestock maintenance, but did not compensate them for this time.

Thus, GH DAIRY did not pay minimum wages for all hours worked by Ms. Torres and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime

premium payment, GH DAIRY did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, GH DAIRY regularly failed to pay at least minimum wages to Ms. Torres and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

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

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

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

As stated, GH DAIRY had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads. As a result, Ms. Torres and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period, have their meal periods interrupted, and/or had to forgo their meal periods altogether. Additionally, as stated, GH DAIRY had a company-wide practice of failing to schedule meal periods, which further caused Ms. Torres and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, during her employment, Ms. Torres typically took meal periods after the end of her fifth hour of work because her workload was heavier in the mornings. Ms. Torres's supervisors also interrupted her meal periods on a daily basis to discuss work-related matters or to ask her to assist agricultural workers who were picking up supplies for farming or livestock maintenance. In addition, Ms. Torres missed her meal periods once per week because there were not enough employees to assist agricultural workers who were picking up supplies.

Furthermore, on information and belief, because GH DAIRY frowned upon employees accruing meal period penalties, GH DAIRY's management would adjust Ms. Torres's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by GH DAIRY.

Moreover, GH DAIRY did not schedule second meal periods and had no policy for providing Ms. Torres and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Ms. Torres worked shifts in excess of ten (10) hours or more per day, but was not provided her second meal period during these shifts. Ms. Torres and other aggrieved employees did not sign valid meal period waivers on all days that they were entitled to meal periods and were not relieved of all duties.

GH DAIRY knew or should have known that as a result of its policies, Ms. Torres and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. GH DAIRY further knew or should have known that it did not pay Ms. Torres and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

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

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

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

California Labor Code sections 226.7, 516, 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

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

During the relevant time period, GH DAIRY regularly failed to authorize and permit Ms. Torres and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked

or major fraction thereof. As with meal periods, GH DAIRY's company-wide practices, including understaffing and assigning heavy workloads, prevented Ms. Torres and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. GH DAIRY also failed to schedule rest periods, which, coupled with GH DAIRY's failure to provide adequate rest period coverage, further led to Ms. Torres and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, GH DAIRY maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Torres and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Torres and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, GH DAIRY effectively maintained control over Ms. Torres and other aggrieved employees during rest periods.

As a result of GH DAIRY's practices and policies, Ms. Torres and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Torres frequently worked through her shifts without taking her 10-minute rest periods due to the workload, lack of coverage, and failure to schedule rest periods.

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

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

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

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

During the relevant time period, GH DAIRY has knowingly and intentionally provided Ms. Torres and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, GH DAIRY issued uniform wage statements to Ms. Torres and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, GH DAIRY violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because GH DAIRY did not record the time Ms. Torres and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted or missed (and therefore time for which they should have been paid), GH DAIRY did not list the correct amount of gross wages and net wages earned by Ms. Torres and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, GH DAIRY failed to accurately list the total number of the hours worked by Ms. Torres and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

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

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for

longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, GH DAIRY also engaged in a company-wide practice and/or policy of falsifying Ms. Torres’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Ms. Torres and other aggrieved employees. Furthermore, in light of GH DAIRY’s failure to provide Ms. Torres and other aggrieved employees with second 30-minute meal periods to which they were entitled, GH DAIRY kept no records of meal start and end times for second meal periods.

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

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

Violation of California Labor Code § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee’s final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

GH DAIRY had a company-wide policy and practice of failing to pay Ms. Torres and other aggrieved employees vested vacation wages that were owed to them at the end of their employment, in violation of California Labor Code section 227.3. For example, upon information and belief, GH DAIRY failed to pay Ms. Torres the balance of her accrued and unused vacation wages, which was 48 hours at the time of her resignation. GH DAIRY’s failure to pay Ms. Torres and other aggrieved employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3.

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

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

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

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

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

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

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

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

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, GH DAIRY, on a company-wide basis, required that Ms. Torres and other aggrieved employees use their own personal cellular phones and cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses.

For example, Ms. Torres was required to use her personal cellular phone to complete work-related tasks, such as discussing ongoing assignments with GH DAIRY's managers. Although GH DAIRY required Ms. Torres and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, GH DAIRY failed to reimburse them for this cost.

GH DAIRY could have provided Ms. Torres and other aggrieved employees with the actual tools for use on the job, such as company phones to be used for fulfilling work-related tasks, or, GH DAIRY could have reimbursed employees for the costs of their cellular phone usage. Instead, GH DAIRY passed these operating costs off onto Ms. Torres and other aggrieved employees. At all relevant times, Ms. Torres did not earn at least two (2) times the minimum wage.

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

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

GH DAIRY failed to provide Ms. Torres and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). GH DAIRY's failure to provide Ms. Torres and other aggrieved employees with written notice of basic information regarding their employment with GH DAIRY is in violation of Labor Code section 2810.5.

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

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the

employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” GH DAIRY, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Torres’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Torres seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Torres, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against GH DAIRY for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: GH DAIRY (via U.S. Certified Mail)

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

GH DAIRY
14651 GROVE AVE
ONTARIO, CA 91762



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2. Article Number (Transfer from service label)

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

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A. Signature

X☐ Agent☐ Addressee

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C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

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

Richard G. Anderson
Jeff W. LeBlanc
Anderson & LeBlanc, A.P.L.C.
1365 West Foothill Blvd., Suite 2
Upland, California 91786
andersonlaw@live.com
jleblanc@andersonleblanc.com

- () **ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).
- () **MESSENGER:** I caused such envelope to be delivered by hand to the individuals at the address listed above via a messenger service (Prolegal).
- () **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered via overnight courier service (FedEx) to the individuals at the address listed above.
- (X) **BY E-MAIL:** Due to the National Emergency and public health orders in California related to the coronavirus and COVID-19 pandemic, Capstone Law APC attorneys and staff are working remotely and therefore have limited capabilities to send physical mail in the normal course of business. On this date, I personally transmitted the foregoing document(s) using electronic mail to the e-mail address(es) of the person(s) listed above.
- (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Sandy S. Acevedo