

NICHOLAS & TOMASEVIC, LLP

Craig M. Nicholas (SBN 178444)

Shaun Markley (SBN 291785)

Jake Schulte (SBN 293733)

225 Broadway, 19th Floor

San Diego, California 92101

Tel: (619) 325-0492

Fax: (619) 325-0496

Email: cnicholas@nicholaslaw.org

Email: smarkley@nicholaslaw.org

Email: jschulte@nicholaslaw.org

Attorneys for Plaintiff,
JOSE AGUILERA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

JOSE AGUILERA, an individual, on behalf
of himself, and on behalf of others similarly
situated;

Plaintiff,

vs.

WM. BOLTHOUSE FARMS, INC., a
Michigan corporation, and DOES 1-100,
inclusive;

Defendants.

CASE NO.: BCV-21-100160

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) FAILURE TO PROPERLY PAY
OVERTIME WAGES;**
- (2) FAILURE TO PROPERLY PAY
REPORTING TIME WAGES;**
- (3) FAILURE TO PROPERLY PAY MEAL
AND REST PREMIUM WAGES;**
- (4) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS;**
- (5) FAILURE TO TIMELY PAY WAGES
UNDER CALIFORNIA LAW;**
- (6) VIOLATION OF CALIFORNIA'S UCL;
and**
- (7) ENFORCEMENT OF CALIFORNIA
PRIVATE ATTORNEYS GENERAL
ACT.**

DEMAND FOR JURY TRIAL.

1 Plaintiff Jose Aguilera (“Aguilera” or “Plaintiff”) brings this action against Defendant WM.
2 Bolthouse Farms, Inc. (“Bolthouse” or “Defendant”), on behalf of himself and all others similarly
3 situated. Plaintiff alleges on information and belief as follows:

4 **I. INTRODUCTION**

5 1. To disincentivize working non-exempt employees over 8 hours in a day or 40 in a week, and
6 to ensure workers are fully compensated for their extra labor, California requires employers to pay
7 overtime at one- and one-half times the worker’s “regular rate.” See Labor Code section 510 and
8 Wage Order 1, 3(A). The regular rate is not straight time rate (i.e., his or her normal hourly wage
9 rate). Instead, the regular rate changes from pay period to pay period and accounts for non-hourly
10 compensation like incentive payments. The per-hour value of non-hourly pay must be determined
11 so that the employee's regular rate of pay—and, derivatively, the employee's overtime pay rate—
12 reflects all the various forms of regular compensation that the employee earned in the relevant pay
13 period. *See Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542, 554 (2018), as modified
14 (Apr. 25, 2018) and *see* California’s Division of Labor Standards Enforcement (“DLSE”)
15 Enforcement Policies and Interpretations Manual (2002), § 49.1.2 (defining the “regular rate”).

16 2. Employees are also entitled to extra remuneration in the form of reporting time pay
17 when they report to work but are not put to work, are put to work for less hours than scheduled,
18 and/or must report to work for a second time during a workday. See Wage Order 1, 5 (setting forth
19 reporting time pay obligations). Like overtime, reporting time pay is a product of the employee’s
20 regular rate and not the hourly straight time rate.

21 3. Still further, employees earn meal and rest period premium pay at their regular rate
22 when they are not afforded a timely, compliant meal or rest break. Wage Order 1, 11 and 12 (setting
23 forth meal and rest break requirements as well as wages owed as a result of failing to provide breaks);
24 and *see* Lab. Code 226.7.

25 4. At the outset of the pandemic, like many employers, Bolthouse began incentivizing
26 its workforce, and potential employees, with additional “essential pay” – a flat per pay period amount
27 of additional non-hourly compensation. Despite the clear mandate in California to pay overtime,
28 reporting time pay, and meal and rest premium pay at employees’ “regular rates” and not their

straight time hourly rates, Bolthouse fails to account for non-hourly essential pay when paying these various forms of wages.

5. Like the hundreds of other non-exempt hourly employees working for Bolthouse since the start of 2020, Plaintiff worked overtime, received meal or rest premium pay, and received reporting time pay during pay periods that he also received flat sum essential pay with no corresponding increase to his regular rate to account for the additional non-hourly essential pay. This robs Plaintiff and the class of overtime wages, regular wages earned for reporting time, and meal and rest premium wages. It also means that Bolthouse incorrectly listed pay rates and total earnings on these individuals wage statements and failed to pay them all wages due upon termination in violation of Labor Codes 226 and 202-204. This same conduct also violates California's Unfair Competition law which prohibits any individual from committing unfair or illegal acts.

6. Defendant's employment practices are in violation of the California Labor Code, the California Code of Regulations; California Industrial Wage Commission ("IWC") Wage Orders; California's Division of Labor Standards Enforcement ("DLSE") policies; California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code Sections 17200, *et seq.*; and California's Private Attorneys General Act, Cal. Labor Code Sections 2698, *et seq.*

7. Plaintiff, on behalf of himself and his fellow non-exempt employees who fell victim to the above-mentioned employment practices hereby seek all back-pay, unpaid wages, penalties, liquidated damages, interest, and all other remedies that they are entitled to by law.

II. JURISDICTION AND VENUE

8. This action is within the Court’s jurisdiction under California Labor Code sections 2698 et seq. and California’s Unfair Competition Law (“UCL”), Business and Professions Code section 17200 et seq.

9. The amount in controversy arising from the actions and statutory violations as further described below is sufficient to implicate the general jurisdiction of the Superior Court in and for Kern County.

10. Venue is proper in this judicial district, pursuant to California Code of Civil Procedure section 395, as Defendant is headquartered in Bakersfield and the acts complained of were carried out in Bakersfield.

III. PARTIES

11. Plaintiff Aguilera is, and at all times herein mentioned was, an individual residing in the Bakersfield, California. Bolthouse employed Plaintiff as a non-exempt, full-time employee from early to mid-2020 through roughly September 2020.

12. Bolthouse is, and at all times mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal place of business in Bakersfield, California. Bolthouse employs hundreds and possibly thousands of non-exempt employees in California and does substantial business in this state.

13. Plaintiff does not know the true names and capacities of defendants sued as DOES 1 through 100, inclusive, and therefore sues them by fictitious names. Plaintiff is informed and believe DOES 1 through 100, inclusive, are in some way responsible for the events and the aggrieved employees' damages described in this Complaint. Plaintiff will seek leave to amend this Complaint when the true names and capacities of these defendants have been ascertained.

IV. GENERAL ALLEGATIONS

A. Bolthouse Fails to Adjust the Regular Rate, Robbing Employees of Required Wages

14. As set forth above in the Introduction, around the beginning of 2020, Bolthouse began issuing non-hourly “essential pay” to non-exempt workers. These payments are flat sum, usually \$100 per weekly pay period. They show up on wage statements as “Essential Pay” or similar titles.

15. Bolthouse issues these payments in recognition of the additional risk that employees take working in an essential industry during a pandemic where their lives are at risk. Bolthouse also issues these payments to attract, retain, and incentivize employees in a competitive labor market. Non-exempt Bolthouse employees expect these wages weekly and they are paid pursuant to either a formal written plan or an implied promise to continue the payments so long as the workers continue working during the pandemic. These bonuses are announced to employees to induce them to work

1 more steadily or more rapidly or more efficiently or to remain employed by Defendant. Such
2 payments must be included in the regular rate.

3 16. Bolthouse fails to adjust employees' regular rates based on the flat sum incentive
4 payments. This includes the regular rate used to calculate overtime wages, as well as the regular
5 rates used to calculate reporting time and meal/rest premium pay.

6 17. Bolthouse employees like named Plaintiff worked overtime during the same pay
7 periods that they received essential pay.

8 18. Bolthouse employees like named Plaintiff received reporting time pay in the same
9 pay periods that they received essential pay.

10 19. Bolthouse employees like named Plaintiff received meal/rest premium pay in the
11 same pay periods that they received essential pay.

12 **B. Bolthouse Fails to Timely Pay Wages**

13 20. The above-mentioned failures to pay wages mean that Bolthouse fails to pay wages
14 due upon termination in violation of Labor Code sections 201-204.

15 **C. Bolthouse Also Fails to Provide Complaint Pay Stubs**

16 21. Defendant failed to provide Plaintiff and the Class Members with accurate itemized
17 wage statements at the end of each pay period. Specifically, Defendant did not provide wage
18 statements showing accurate "hourly rates in effect during the pay period and the corresponding
19 number of hours worked at each hourly rate." Labor Code, § 226.

20 22. In addition, Bolthouse's wage statements fail to accurately reflect overtime pay, gross
21 wages, and net wages as a result of the above-mentioned violations of California law resulting in
22 underpaid wages. *Id.*

23 **V. CLASS ALLEGATIONS**

24 23. Aguilera brings this action individually, and as a class action, pursuant to California
25 Code of Civil Procedure section 382.

26 24. Aguilera is a member of all classes defined below (collectively, "the Classes").

27 ///

28 ///

1 25. The Overtime Class is comprised of:

2 “All persons in California employed by Defendant during the class period as non-
3 exempt hourly employees who received essential pay (or similarly styled non-
4 hourly wages) during any pay period in which the employee also received overtime
5 pay.”

6 26. The Reporting Time Class is comprised of:

7 “All persons in California employed by Defendant during the class period as non-
8 exempt hourly employees who received essential pay (or similarly styled non-hourly
9 wages) during any pay period in which the employee also received reporting time
10 pay.”

11 27. The Meal/Rest Premium Pay Class is comprised of:

12 “All persons in California employed by Defendant during the class period as non-
13 exempt hourly employees who received essential pay (or similarly styled non-hourly
14 wages) during any pay period in which the employee also received meal or rest
15 premium pay.”¹

16 28. The Class Period is the date that Defendant began issuing essential pay (or similarly
17 styled non-hourly wages) which Plaintiff believes was around March 2020 through trial or whenever
18 Defendant stops making such payments and/or corrects its deficient wage practices.

19 29. To the extent equitable or any other form of tolling operates to toll claims by the
20 Classes against Defendant, the applicable statute of limitations or recovery period should be adjusted
21 accordingly.

22 30. Subject to additional information obtained through further investigation and
23 discovery, the foregoing definition of the Classes may be expanded or narrowed by amendment or
24 amended complaint. Specifically excluded from the proposed Classes are defendant, its officers,
25 directors, agents, trustees, parents, children, corporations, trusts, representatives, employees,
26 principals, servants, partners, joint venturers, or entities controlled by the defendant, and their heirs,
27 successors, assigns, or other persons or entities related to or affiliated with defendant and/or its
28 officers and/or directors, or any of them; the Judge assigned to this action, and any member of the
29 Judge’s immediate family.

¹ Defendant’s wage statements denote this type of pay as “Lunch Penalty” (or similar styling) even though such payments are not penalties but rather premium wages owed to employees. *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007).

1 31. **Numerosity.** The members of the Classes are so numerous that their individual
2 joinder is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the
3 proposed Classes contains many hundreds if not thousands of members. The precise number of
4 Class members is unknown to Plaintiff. The true number of class members is known by Defendant,
5 however, and thus, may be notified of the pendency of this action by first class mail, electronic mail,
6 and by published notice.

7 32. **Existence and Predominance of Common Questions of Law and Fact.** There exists
8 a well-defined community of interest in the questions of law and fact presented by this controversy.
9 Common questions of law and fact exist as to all members of the respective Classes and predominate
10 over any questions affecting only individual Class members. These common legal and factual
11 questions include, but are not limited to, the following:

- 12 a. whether Defendant violated the California Labor Code and the UCL by failing to pay
13 overtime wages at the correct rate of pay based on its essential pay wages;
- 14 b. whether Defendant violated the California Labor Code and the UCL by failing to pay
15 reporting time wages at the correct rate of pay based on its essential pay wages;
- 16 c. whether Defendant violated the California Labor Code and the UCL by failing to pay
17 meal/rest premium wages at the correct rate of pay based on its essential pay wages;
- 18 d. the proper measure of damages sustained by the Class;
- 19 e. whether Defendant failed to timely pay wages as required by California law and,
20 relatedly whether they failed to pay required penalties for these late payments; and
- 21 f. whether Defendant's pay stubs accurately set forth rates of pay, gross, and net wages,
22 among other things.

23 33. **Typicality.** Plaintiff' claims are typical of the claims of the members of the Classes.
24 Plaintiff, like other members of the Classes received essential pay in the same pay periods that he
25 worked overtime, received reporting time pay, and/or received meal/rest premium pay. Similarly,
26 like other class members, Plaintiff did not receive all wages when due and did not receive required
27 penalty payments for these late payments. His wages statements also failed to accurately reflect all
28 hourly rates and the correct amounts of pay for overtime, meal/rest pay, and reporting time pay.

1 34. ***Adequacy of Representation.*** Plaintiff will fairly and adequately protect the interests
2 of the members of the Classes. Plaintiff has retained counsel highly experienced in wage and hour
3 class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no
4 adverse or antagonistic interests to those of the Classes.

5 35. ***Superiority*** (to the extent required). A class action is superior to all other available
6 means for the fair and efficient adjudication of this controversy. The damages or other financial
7 detriment suffered by individual Class members is relatively small compared to the burden and
8 expense that would be entailed by individual litigation of their claims against Defendant. It would
9 thus be virtually impossible for the Class members, on an individual basis, to obtain effective redress
10 for the wrongs done to it. Furthermore, even if Class members could afford such individualized
11 litigation, the court system could not. Individualized litigation would create the danger of
12 inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation
13 would also increase the delay and expense to all parties and the court system from the issues raised
14 by this action. By contrast, the class action device provides the benefits of adjudication of these
15 issues in a single proceeding, economies of scale, and comprehensive supervision by a single court,
16 and presents no unusual management difficulties under the circumstances here.

17 36. In the alternative, the Classes may also be certified because: the prosecution of
18 separate actions by individual Class members would create a risk of inconsistent or varying
19 adjudication with respect to individual Class members that would establish incompatible standards
20 of conduct for Defendant;

21 37. The prosecution of separate actions by individual Class members would create a risk
22 of adjudications with respect to them that would, as a practical matter, be dispositive of the interests
23 of other Class members not parties to the adjudications, or substantially impair or impede their ability
24 to protect their interests; and/or

25 38. Defendant has acted or refused to act on grounds generally applicable to the classes
26 thereby making appropriate final declaratory relief with respect to the members of the Classes as a
27 whole.
28

1 39. Adequate notice can be given to Class members directly using information
2 maintained in Defendant's records or through notice by publication.

3 40. Damages may be calculated, in part, from the employee information maintained in
4 Defendant's records (e.g., paystubs), so that the cost of administering a recovery for the Classes can
5 be minimized. In any event, the precise amount of damages available to Plaintiff and the other
6 members of the Classes is not a barrier to class certification.

7
8 **VI. FIRST CAUSE OF ACTION**
9 **BY AGUILERA ON BEHALF OF HIMSELF AND THE OVERTIME CLASS FOR**
10 **FAILURE TO PAY OVERTIME WAGES**

11 41. Plaintiff incorporates by reference each and every allegation contained above.

12 42. Plaintiff brings this claim on behalf of himself, individually, and on behalf of the
13 Overtime Class against Defendant.

14 43. As set forth above, Bolthouse does not factor non-hourly essential pay into the
15 "regular rate" for purposes of paying overtime during pay periods when its non-exempt employees
16 work overtime and receive essential pay. This fails to pay sufficient overtime wages required by
17 California law. *See* Labor Code section 510 and Wage Order 1, 3(A); *Alvarado v. Dart Container*
18 *Corp. of California*, 4 Cal. 5th 542, 554 (2018); and *see* DLSE) Enforcement Policies and
19 Interpretations Manual (2002), § 49.1.2.

20 44. Plaintiff received flat sum essential pay in the amount of \$100 each weekly pay period
21 that he worked for Defendant in 2020. On several occasions, including but not limited to pay periods
22 ending on August 2, 2020, August 9, 2020, August 16, 2020, August 30, 2020, September 6, 2020,
23 Plaintiff worked overtime for Defendant as reflected on his wage statements. However, Defendant
24 failed to adjust Plaintiff's regular rate to account for these essential pay payments and instead
25 compensated Plaintiff for overtime at his straight time (e.g., base) hourly rate. The same occurred
26 for other members of the Overtime Class.

27 45. Plaintiff, on behalf of himself and the Overtime Class, seeks all unpaid overtime
28 wages, penalties, interest, costs, and attorneys' fees where allowable.

VII. SECOND CAUSE OF ACTION
BY AGUILERA ON BEHALF OF HIMSELF AND THE REPORTING TIME CLASS FOR
FAILURE TO PAY REPORTING TIME WAGES

46. Plaintiff incorporates by reference each and every allegation contained above.

47. Plaintiff brings this claim individually and on behalf of the Reporting Time Class against Defendant.

48. Labor Code section 1194 permits an employee to bring a civil action to recover underpaid wages. *See* Cal. Lab. Code § 1194. Likewise, section 218 authorizes a “civil suit to recover pay for missed meal and rest periods [among other things].”

49. Industrial Welfare Commission (IWC) Wage Orders (Wage Orders”) set forth minimum pay obligations. This includes the obligation to pay reporting time pay under certain circumstances. Wage Order 1 at section 5 (reporting time pay requirements).

50. Bolthouse pays reporting time pay when required under the Wage Orders, however, it fails to do so at the proper “regular rate.” As with overtime, where an employee receives non-hourly essential pay and receives reporting time pay, the reporting time pay is at the straight time hourly wage rate without any adjustment for the essential pay.

51. Plaintiff received essential pay and received reporting time pay at least once during the pay period ending on September 20, 2020. It was paid at his base, straight time rate, without adjustment for the essential pay. The same happened to all members of the Reporting Time Class.

52. Plaintiff and the Reporting Time Class are entitled to recover the full amount of unpaid reporting time wages, applicable penalties including liquidated damages, attorneys' fees, and costs.

VIII. THIRD CAUSE OF ACTION
BY AGUILERA ON BEHALF OF HIMSELF AND THE MEAL/REST PREMIUM PAY
CLASS FOR FAILURE TO PAY PROPER MEAL/REST PREMIUM WAGES

53. Plaintiff incorporates by reference each and every allegation contained above.

54. Aguilera brings this claim on behalf of himself individually and on behalf of the Meal/Rest Premium Pay Class against Defendant.

1 55. The Labor Code and Wage Orders require meal/rest premium pay where an employee
2 is unable to take a mandated meal or rest break. Labor Code, § 226.7, Wage Order 1, §§ 11 and 12.

3 56. Bolthouse pays meal and rest premiums to its employees when they must under
4 California law, however, it does so at the straight time, hourly rate without adjustment for non-hourly
5 essential pay.

6 57. Plaintiff received a meal/rest premium payment during at least one pay period where
7 he also received essential pay (period ending on September 6, 2020). This premium payment was a
8 product of his straight time hourly wage without adjustment for his essential pay. This same thing
9 happened to other members of the Meal/Rest Premium Pay Class.

10 58. Plaintiff and the Meal/Rest Premium Pay Class are entitled to recover the full amount
11 of unpaid meal/rest premium wages, applicable penalties, attorneys' fees, and costs.

12 **IX. FOURTH CAUSE OF ACTION**
13 **BY AGUILERA ON BEHALF OF HIMSELF AND ALL CLASSES FOR FAILURE TO**
 PAY ALL WAGES WHEN DUE

14 59. Plaintiff incorporates by reference each and every allegation contained above.

15 60. Plaintiff brings this claim individually and on behalf of all Classes against Defendant.

16 61. Pursuant to California Labor Code section 201, unpaid wages are due upon
17 termination. Aguilera was terminated on or around September 2020.

18 62. Defendant failed to pay the earned and unpaid wages of Plaintiff and the Class
19 members in the required amount of time. This is true for several reasons. First, as to the Overtime
20 Class, they failed to receive overtime pay. For the Reporting Time Class, they failed to receive all
21 owed reporting time wages. Likewise, the Meal/Rest Premium Pay Class failed to receive all owed
22 meal/rest premium wages.

23 63. Pursuant to California Labor Code section 203, "[i]f an employer willfully fails to
24 pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any
25 wages of an employee who is discharged or who quits, the wages of the employee shall continue as
26 a penalty from the due date thereof at the same rate until paid or until an action therefore is
27 commenced; but the wages shall not continue for more than 30 days."
28

64. Accordingly, Plaintiff and other terminated members of the various Classes are entitled to recover waiting-time penalties under California Labor Code Section 203 in an amount equal to 30 times their daily wage following each termination of employment when they were not paid appropriately (as explained in detail above).

X. FIFTH CAUSE OF ACTION
BY AGUILERA ON BEHALF OF HIMSELF AND ALL CLASSES
FOR FAILURE TO ISSUE PROPER WAGE STATEMENTS

65. Plaintiff incorporates by reference each and every allegation contained above.

66. Plaintiff brings this claim individually and on behalf of all Classes against Defendant.

67. The purpose for California's wage statement requirement, Labor Code Sections 226, et seq., is to ensure the employees are able to determine whether or not they are being paid their wages in accordance with California law.

68. Defendant violated the above statute by failing to provide accurate and complete paystubs/wage statements. Defendant's wage statements fail to accurately reflect overtime pay, reporting time pay, meal/rest premium pay, gross wages, and net wages as a result of the above-mentioned violations of California law resulting in underpaid wages. They also reflect inaccurate hourly rates.

69. Plaintiff and the Classes are entitled to recover applicable penalties, attorneys' fees, and costs.

XI. SIXTH CAUSE OF ACTION

BY AGUILERA ON BEHALF OF HIMSELF AND THE CLASSES FOR VIOLATION OF CALIFORNIA’S UCL

70. Plaintiff incorporates by reference each and every allegation contained above.

71. California Business & Professions Code, Sections 17200, et seq. ("UCL") prohibits any unlawful, unfair, deceptive, or fraudulent business practice and provides for restitution of unpaid wages.

72. Defendant committed and continues to commit business practices within the meaning of California's UCL, including, but not limited to: (i) Failing to pay the full amount of minimum wages (for the Reporting Time Class and Meal/Rest Premium Pay Class) and overtime wages (for

1 the Overtime Class). The members of these Classes may receive restitution in the form of unpaid
2 wages owed.

3 73. The unlawful business practices described above have proximately caused monetary
4 damages to Plaintiff and to the general public.

5 74. Pursuant to the UCL, Aguilera and these Classes are entitled to restitution of money
6 or property acquired by Defendant by means of such business practices, in amounts not yet known,
7 but to be ascertained at trial.

8 75. Plaintiff's success in this action will result in the enforcement of important rights
9 affecting the public interest by conferring a significant benefit upon the general public.

10 76. Private enforcement of these rights is necessary as no public agency has pursued
11 enforcement. There is a financial burden incurred in pursuing this action, and it would be against
12 the interests of justice to require the payment of attorneys' fees from any recovery in this action.
13 Aguilera is therefore entitled to an award of attorneys' fees and costs of suit pursuant to the UCL
14 and California Code of Civil Procedure section 1021.5.

15
16 **XII. SEVENTH CAUSE OF ACTION**
17 **BY AGUILERA ON BEHALF OF HIMSELF AND OTHER AGGRIEVED EMPLOYEES**
18 **FOR ENFORCEMENT OF CALIFORNIA'S PRIVATE ATTORNEYS GENERAL ACT**

19 77. Plaintiff incorporates by reference each and every allegation contained above.

20 78. The California Private Attorneys General Act ("PAGA") permits aggrieved
21 employees, like Plaintiff, to recover civil penalties for violations of numerous Labor Code sections.
22 See Cal. Lab. Code, § 2699.5.

23 79. Defendant's conduct, as alleged above, violates multiple sections of the California
24 Labor Code, including, but not limited to, the following:

- 25 a. California Labor Code section 510 for failure to properly pay overtime wages;
- 26 b. California Labor Code section 1194 for failure to properly pay reporting time wages;
- 27 c. California Labor Code section 226.7 for failure to properly pay meal and rest
28 premium wages;

1 d. California Labor Code sections 201, 202, 203, and 204, for failure to timely pay all
2 earned wages; and

3 e. California Labor Code section 226, for failure to provide accurate wages statements.

4 80. Plaintiff has complied with all administrative requirements and pre-conditions
5 contained within California Labor Code section 2699.3. Plaintiff's counsel submitted notice to the
6 PAGA Administrator, with a copy to Defendant, on January 25, 2021. The California Labor and
7 Workforce Development Agency confirmed notice on the same day and assigned it LWDA Case
8 No. CM-819573-21. The deadline for the PAGA Administrator to respond ran on March 31, 2021.
9 Plaintiff received no response.

10 81. Pursuant to PAGA and, in particular, California Labor Code sections 2699, 2699.3, and
11 2699.5, Plaintiff is entitled to and hereby seeks to recover civil penalties against Defendant, in
12 addition to reasonable attorney fees and costs, on behalf of himself and all other similarly aggrieved
13 current and former employees of Defendant.

14 XII. PRAYER FOR RELIEF

15 WHEREFORE, Plaintiff on his own behalf and on the behalf of those similarly situated,
16 prays for judgment as follows:

- 17 1. For an order certifying the Class as a class action;
- 18 2. For consequential damages according to proof;
- 19 3. For statutory damages, enhanced damages, liquidated damages, and penalties
20 (including civil penalties) according to proof, as permitted under the Labor Code (but
21 not yet, at this time, including PAGA) and other statutes;
- 22 4. For a declaration that Defendant violated the rights of Plaintiff and those similarly
23 situated under California law;
- 24 5. For liquidated damages according to proof pursuant to California Labor Code Section
25 1194.2;
- 26 6. For waiting time penalties according to proof pursuant to California Labor Code
27 Sections 201, 202, and 203;
- 28

- 1 7. For restitution to Aguilera and those similarly situated of all funds unlawfully
2 acquired by Defendant by means of any acts or practices declared by this Court to
3 violate the mandates established by California's UCL;
4 8. For actual damages or statutory penalties according to proof as set forth in California
5 Labor Code Section 226;
6 9. For pre-judgment interest as allowed by California Labor Code Sections 218.5 or
7 1194 and California Civil Code Section 3287;
8 10. For civil penalties, attorney's fees, and costs under PAGA;
9 11. For reasonable attorneys' fees, expenses, and costs as provided by the California
10 Labor Code, and the California Code of Civil Procedure, namely Section 1021.5 and
11 PAGA;
12 12. For such other relief that the Court may deem just and proper.

13 **XIII. REQUEST FOR JURY TRIAL**

14 Plaintiff hereby requests a Trial by Jury.

15
16 Respectfully submitted:

17 DATED: April 13, 2021

NICHOLAS & TOMASEVIC, LLP

18
19 By:



Craig M. Nicholas (SBN 178444)

Shaun Markley (SBN 291785)

Jake Schulte (SBN 293733)

225 Broadway, 19th Floor

San Diego, California 92101

Tel: (619) 325-0492

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Email: cnicholas@nicholaslaw.org

Email: smarkley@nicholaslaw.org

Email: jschulte@nicholaslaw.org

Attorneys for Plaintiff,
JOSE AGUILERA