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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

MARIA DEL CARMEN ESPINOZA, an
individual,

Plaintiff,

vs.

GUTIERREZ FLC, INC., a California
corporation; WESPAK, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: VCU286325

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 551, 552, 558,
1194, AND 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.2, 226.7, AND
516);**
- (5) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203; 205);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Maria Del Carmen Espinoza ("Plaintiff"), an individual hereby brings this First
2 Amended Representative Action Complaint ("FAC") against Gutierrez FLC, Inc., a California
3 corporation; WesPak, Inc., a California corporation; and DOES 1 to 100, inclusive (collectively
4 "Defendants"), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, hereby brings this First Amended Representative Action Complaint for
7 recovery of unpaid wages and penalties under California Business & Professions Code § 17200
8 *et. seq.*, Labor Code §§ 201-205, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
9 1198, and 2698 *et seq.*; and Industrial Welfare Commission Wage Order 14 ("Wage Order 14"),
10 in addition to seeking declaratory relief and restitution. This Court has jurisdiction over
11 Defendants' violations of the California Labor Code because the amount in controversy exceeds
12 this Court's jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
15 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
16 County of Tulare. One or more of the Defendants, transact business, have agent(s) within the
17 County of Tulare, and/or otherwise are found within the County of Tulare, and Defendants are
18 within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was and currently is, a California resident. During the four years immediately preceding
22 the filing of the Complaint in this action and within the statute of limitations periods applicable
23 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
24 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
25 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
26 §§ 201-205, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et*
27 *seq.*; California Business & Professions Code § 17200 *et seq.* ("Unfair Competition Law"); and
28 Wage Order 14, which sets employment standards for Agricultural Occupations.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
2 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
3 continue to do) business by employing seasonal farm labor employees to harvest agricultural
4 commodities in the United States, and employed Plaintiff and other, similarly-situated non-
5 exempt employees within Tulare County and the state of California and, therefore, were (and are)
6 doing business in Tulare County and the State of California.

7 5. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
11 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
12 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
13 and proximately caused Plaintiff and other similarly situated non-exempt employees to be subject
14 to the unlawful employment practices, wrongs, injuries and damages complained of herein.

15 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
16 herein, Defendants were and are the employers of Plaintiff.

17 7. At all times herein mentioned, each of said Defendants participated in the doing
18 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
19 Defendants, and each of them, were the agents, servants, and employees of each and every one of
20 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
21 were acting within the course and scope of said agency and employment. Defendants, and each
22 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
23 omissions complained of herein.

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and other
28 similarly situated non-exempt employees.

1 9. Defendant WesPak, Inc. is also jointly liable with Defendant Gutierrez FLC, Inc.
2 for all civil legal responsibility and civil liability for the payment of wages, including all sums
3 payable to an employee or the state of California based upon any failure to pay wages, pursuant
4 to Labor Code §2810.3.

5 **GENERAL FACTUAL ALLEGATIONS**

6 10. Defendants are in the agricultural business and employ seasonal farm labor
7 employees to harvest agricultural goods, specifically citrus fruits. Plaintiff worked for
8 Defendants as a non-exempt farm labor employee primarily performing the task of picking
9 oranges on Defendants farms for approximately two days in late April 2020 before sustaining a
10 serious injury on the job. Despite working between 7-8 hours per day depending on the weather
11 conditions, Defendants did not employ any actual timekeeping practices and instead compensated
12 Plaintiff and other aggrieved employees on a strictly piece rate basis. At no point during her
13 employment with Defendants was Plaintiff made to confirm or sign off on her hours worked.
14 Defendants have not boarded or lodged Plaintiff during her employment.

15 11. During Plaintiff's employment with Defendants, Plaintiff's daily hours worked
16 would range from anywhere between 7 and 8 hours per shift. Plaintiff was solely compensated
17 on a piece-rate basis, whereby she was paid a set rate per box filled with citrus fruit. Defendants
18 at no point asked how many hours Plaintiff worked nor did they take an efforts to record them,
19 instead only inquiring as to how many boxes of oranges were filled up for the workday. Plaintiff
20 was not paid an hourly minimum wage if her earned piece-rate compensation did not exceed her
21 minimum wages earned in a pay period as a consequence of Defendants' failure to record
22 Plaintiff's hours worked in any fashion. Upon information and belief, Defendants did not pay any
23 overtime hours to Plaintiff and other aggrieved employees at any time regardless of whether they
24 were performing work on a piece rate or hourly basis.

25 12. Plaintiff and other aggrieved employees were not authorized to take all legally
26 required rest periods regardless of whether they were working on a piece-rate or hourly basis.
27 Defendants did not provide Plaintiff and other aggrieved employees with any legally compliant
28 rest periods free of employer control and in the shade of the sun during the entirety of Plaintiff's

1 employment with Defendants. Despite Defendants' failure to authorize and permit Plaintiff and
2 other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful
3 practices, Defendants never provided Plaintiff and other aggrieved employees with an hour of pay
4 at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon
5 information and belief, Defendants maintained no payroll code or another mechanism for the
6 payment of rest period premiums in the event Plaintiff and other aggrieved employees were not
7 authorized to take lawful rest periods.

8 13. Defendants have failed to accurately record and compensate Plaintiff and other
9 aggrieved employees who are compensated on a piece-rate basis for non-productive time. *See*
10 *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate
11 compensation structure that does not separately compensate employees for non-productive time
12 violates California minimum wage laws). Plaintiff and other aggrieved employees were required
13 to perform work duties and activities that were not directly compensated on a piece-rate basis.
14 For example, on those occasions where the weather conditions did not permit Plaintiff and other
15 aggrieved employees to commence/continue work, they would have to wait for the conditions to
16 improve before they were permitted to begin/resume their shifts. Additionally, employees were
17 not compensated for bathroom and water breaks, waiting in lines, and/or other mandatory duties
18 that were not directly compensated on a piece-rate basis. Defendants as a matter of policy/practice
19 made no effort to actually record this non-productive time and did not compensate Plaintiff and
20 other aggrieved employees for daily non-productive time in any fashion whatsoever. Plaintiff
21 alleges that all this wait time constitutes unproductive worktime which must be compensated
22 under California law. Accordingly, Plaintiff estimates that she and other aggrieved employees
23 worked at least an additional 1.5-2.5 hours per shift of non-productive time. Plaintiff alleges that
24 Defendants have not accurately tracked and compensated employees' non-productive time in
25 compliance with Labor Code § 226.2.

26 14. Defendants have also failed to record employees' total hours worked each
27 workday accurately. Specifically, Defendants' forepersons did not record the hours worked in any
28 fashion apparent to Plaintiff and the other aggrieved employees when they were performing piece

1 rate work. Plaintiff never formally clocked in or clocked out during her shifts and was never
2 provided any sort of timecard reflecting the hours she worked. Rather, Defendants tracked
3 Plaintiff and the aggrieved employees piece rate compensation exclusively while failing to record
4 the actual number of hours worked in any manner. As a result, Defendants failed to ensure that
5 Plaintiff and other aggrieved employees were being paid at least the minimum wage for all hours
6 actually worked and failed to ensure that Plaintiff and other aggrieved employees received proper
7 overtime wages for all overtime hours worked, in compliance with Wage Order 14.

8 15. Defendants also did not provide Plaintiff and other aggrieved employees with a
9 legally complaint first meal period when they worked shifts in excess of 6.0 hours. Plaintiff and
10 other aggrieved employees were not entitled nor permitted to take legally compliant meal periods
11 at any point during the entirety of her duration of employment with Defendants. Instead, Plaintiff
12 and other aggrieved employees were instructed to work throughout the entirety of their shifts in
13 an effort to satisfy their supervisors demands and to maximize piece rate compensation. Plaintiff
14 and the other aggrieved employees were not informed by Defendants of their legal right to take
15 duty-free uninterrupted meal periods before the conclusion of their fifth hour of work pursuant to
16 Labor Code Section 512. Defendants were not only aware of, but actively encouraged this
17 practice. Upon information and belief, Defendants' forepersons did not accurately record meal
18 periods in any manner. Despite Defendants' failure to provide Plaintiff and other aggrieved
19 employees with all lawful meal periods due to their uniform and unlawful practices, Defendants
20 never provided Plaintiff and other aggrieved employees with an hour of pay at their regular rate
21 for each meal period violation as required by Labor Code § 226.7.

22 16. As a result of Defendants' failure to accurately compensate Plaintiff and other
23 aggrieved employees for non-productive time, failure to pay all minimum and overtime wages,
24 and failure to provide all required meal periods and authorize all rest periods or pay premium pay
25 in lieu thereof, Defendants have maintained inaccurate payroll records, failed to timely pay all
26 wages owed to separating employees at the time of their separation, and issued inaccurate wage
27 statements. Furthermore, Defendants have maintained facially inaccurate wage statements by
28 failing to include the correct amount of non-productive time, rest period compensation, and gross

1 amount of monies owed to Plaintiff and other aggrieved employees.

2 17. Additionally, Defendant Gutierrez FLC, Inc. is a farm labor contractor subject to
3 the requirements of Labor Code § 205, which requires that employees be paid weekly, on a
4 business day designated in advance, for all wages earned up to and including the fourth day before
5 the scheduled payday. However, Defendants pay their employees on a delay of six days, in
6 violation of the “fourth day” requirements found in Labor Code § 205.

7 **FIRST CAUSE OF ACTION**

8 **MINIMUM WAGE VIOLATIONS**

9 **(AGAINST ALL DEFENDANTS)**

10 18. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

11 19. Wage Order 14, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
12 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
13 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
14 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
15 attorneys’ fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
16 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
17 their pay practices to the requirements of the law by failing to pay Plaintiff and other non-exempt
18 employees for all hours actually worked including, but not limited to, all hours they were subject
19 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
20 and Wage Order 14.

21 20. California Labor Code § 1198 makes unlawful the employment of an employee
22 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
23 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
24 those employees the balance of the unpaid wages as well as liquidated damages in an amount
25 equal to the wages due and interest thereon.

26 21. As a direct and proximate result of Defendants’ unlawful conduct as alleged
27 herein, Plaintiff and other non-exempt employees have sustained economic damages, including
28 but not limited to, unpaid wages and lost interest in an amount to be established at trial, and they

1 are entitled to recover economic and statutory damages and penalties and other appropriate relief
2 as a result of Defendants' violations of the California Labor Code and Wage Order 14.

3 22. Defendants' practice and uniform administration of corporate policy regarding
4 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
5 other non-exempt employees in a civil action for the unpaid amount of minimum wages,
6 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
7 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
8 Civil Procedure § 1021.5.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY ALL OVERTIME WAGE**

11 **(AGAINST AL DEFENDANTS)**

12 23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 24. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
14 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
15 overtime hours worked, and provide a private right of action for the failure to pay all overtime
16 compensation for overtime work performed.

17 25. At all times relevant herein, Defendants were required to properly compensate
18 Plaintiff and other non-exempt employees for all overtime hours worked pursuant to California
19 Labor Code § 1194 and Wage Order 14. Wage Order 14, § 3 requires an employer to pay overtime
20 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
21 in the Wage Order.

22 26. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
23 employees to work overtime hours but did not compensate Plaintiff or other non-exempt
24 employees at one and one-half times their regular rate of pay for such hours.

25 27. The foregoing policies and practices are unlawful and create entitlement to
26 recovery by Plaintiff and other non-exempt employees in a civil action for the unpaid amount of
27 overtime premiums owing, including interest thereon, statutory and civil penalties, and attorneys'
28 fees and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage

Order 14, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

28. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

29. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and other non-exempt employees, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 14, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and other non-exempt employees at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and 512.

30. As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, as well as statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

32. Wage Order 14, § 12 and California Labor Code §§ 226.2, 226.7 and 516 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

33. As alleged herein, Defendants failed to authorize and permit Plaintiff and other non-exempt employees to take all legally compliant rest periods.

34. The foregoing violations create an entitlement to recovery by Plaintiff and other non-exempt employees in a civil action for the unpaid rest period wages and the amount of rest period premiums owing, including interest thereon, as well as statutory penalties, civil penalties,

1 and costs of suit according to California Labor Code §§226.2, 226.7, 516, 558, and Civil Code §§
2 3287(b) and 3289.

3 **FIFTH CAUSE OF ACTION**
4 **WAGE STATEMENT VIOLATIONS**
5 **(AGAINST ALL DEFENDANTS)**

6 35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
9 and other non-exempt employees with accurate, itemized wage statements that included, among
10 other requirements, accurate total gross wages earned, non-productive time, meal and rest period
11 premiums, and total net wages earned in violation of Labor Code §226 *et seq.*

12 37. Defendants' failure to furnish Plaintiff and other non-exempt employees with
13 complete and accurate, itemized wage statements resulted in actual injury, as said failures led to,
14 among other things, the non-payment of all of their meal and rest period premiums, and deprived
15 them of the information necessary to identify discrepancies in Defendants' reported data.

16 38. Defendants' failures created an entitlement to Plaintiff and other non-exempt
17 employees in a civil action for damages and/or penalties pursuant to Labor Code § 226, including
18 statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit pursuant
19 to Labor Code § 226 *et seq.*

20 **SIXTH CAUSE OF ACTION**
21 **WAITING TIME PENALTIES**
22 **(AGAINST ALL DEFENDANTS)**

23 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24 40. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
25 an employer to pay all wages immediately at the time of termination of employment in the event
26 the employer discharges the employee or the employee provides at least 72 hours of notice of
27 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
28 intent to quit, said employee's wages become due and payable not later than 72 hours upon said

1 employee's last date of employment.

2 41. Defendants failed to timely pay Plaintiff and other non-exempt employees all final
3 wages due to them at the time of their separation including, among other things, unpaid amounts
4 for non-productive time, underpaid overtime and minimum wages owed, and meal and rest
5 period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges,
6 that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and
7 other non-exempt employees all earned wages at the end of employment in a timely manner
8 pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final
9 wages was willful within the meaning of Labor Code § 203.

10 42. Defendants' willful failure to timely pay Plaintiff and other non-exempt
11 employees their earned wages upon separation from employment results in a continued payment
12 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other
13 non-exempt employees are entitled to compensation pursuant to Labor Code § 203, plus
14 reasonable attorneys' fees and costs of suit.

15 **SEVENTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 **(AGAINST ALL DEFENDANTS)**

18 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 44. Defendants have engaged and continue to engage in unfair and/or unlawful
20 business practices in California in violation of California Business and Professions Code § 17200
21 *et seq.*, by failing to pay Plaintiff and other non-exempt employees all overtime and minimum
22 wages, failing to provide all required meal periods, failing to authorize and permit all required
23 rest periods, failing to pay meal and rest period premium wage payments, failing to furnish
24 accurate wage statements, and willfully failing to timely pay Plaintiff other non-exempt
25 employees all final wages upon separation of employment.

26 45. Defendants' utilization of these unfair and/or unlawful business practices deprived
27 Plaintiff and continues to deprive other non-exempt employees of compensation to which they
28 are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair

1 advantage over Defendants' competitors who have been and/or are currently employing workers
2 and attempting to do so in honest compliance with applicable wage and hour laws.

3 46. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
4 herein, Plaintiff for herself and other non-exempt employees, seeks full restitution of monies, as
5 necessary and according to proof, to restore any and all monies withheld, acquired and/or
6 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

7 47. The acts complained of herein occurred within the last four years immediately
8 preceding the filing of the Complaint in this action.

9 48. Plaintiff was compelled to retain the services of counsel to file this court action to
10 protect her interests, to obtain restitution and injunctive relief on behalf of Defendants' current
11 non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has
12 thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover
13 under Code of Civil Procedure § 1021.5.

14 **EIGHTH CAUSE OF ACTION**

15 **PRIVATE ATTORNEYS GENERAL ACT**

16 **(AGAINST ALL DEFENDANTS)**

17 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 50. Defendants have committed several Labor Code violations against Plaintiff and
19 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor
20 Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this
21 representative action against Defendants to recover the civil penalties due to Plaintiff, other
22 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
23 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
24 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
25 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
26 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
27 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
28 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per

1 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
2 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
3 each initial violation and \$200 for each subsequent violation per employee per pay period for
4 those violations of the Labor Code for which no civil penalty is specifically provided, based on
5 the following Labor Code:

6 a. Failing to pay minimum wages for all hours worked to Plaintiff and other
7 aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197,
8 and 1198;

9 b. Failing to pay Plaintiff and other aggrieved employees all earned overtime
10 compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

11 c. Failing to provide all legally required meal periods, and failure to pay meal
12 period premium wages, to Plaintiff and other aggrieved employees at the regular rate of
13 compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;

14 d. Failing to authorize and permit all legally required rest periods, and failure
15 to pay rest period premium wages, to Plaintiff and other aggrieved employees at the
16 regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;

17 e. Failing to furnish Plaintiff and other aggrieved employees with complete,
18 accurate, itemized wage statements in violation of Labor Code § 226;

19 f. Failing to timely pay all final wages and compensation earned by Plaintiff
20 and other aggrieved employees at the time of separation in violation of Labor Code §§
21 201, 202, and 203;

22 g. Failing to pay non-exempt employees all earned wages at least twice
23 during each calendar month in violation of Labor Code § 204;

24 h. Failing to compensate Plaintiff and other aggrieved employees at least
25 once every week on a business day designated in advance and including all wages earned
26 up to and including the fourth day before such payday in violation of Labor Code § 205;
27 and

28 i. Failing to maintain accurate records on behalf of Plaintiff and other

1 aggrieved employees in violation of Labor Code § 1174.

2 51. On March 23, 2020, Plaintiff notified Defendants via certified mail, and notified
3 the California Labor and Workforce Development Agency (“LWDA”) via its website, of
4 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
5 civil penalties under California Labor Code § 2698 et seq. with respect to violations of the
6 California Labor Code identified in Paragraph 50 (a)-(i). Now that sixty-five days have passed
7 from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not
8 provided notice that it intends to investigate the violations, Plaintiff has exhausted her
9 administrative requirements for bringing a claim under the Private Attorneys General Act with
10 respect to these violations.

11 52. Plaintiff was compelled to retain the services of counsel to file this court action to
12 protect her interests and the interests of other similarly aggrieved employees, and to assess and
13 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and
14 costs, which she is entitled to receive under California Labor Code § 2699(g)

15 **PRAYER**

16 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
17 this suit is brought against Defendants, as follows:

18 1. Upon the First Cause of Action, for payment of minimum wages, liquidated
19 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
20 1197;

21 2. Upon the Second Cause of Action, for compensatory, consequential, general, and
22 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

23 3. Upon the Third Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

25 4. Upon the Fourth Cause of Action, for compensatory, consequential, general and
26 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

27 5. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
28 226, *et seq.*;

1 6. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
2 Labor Code § 201-203;

3 7. Upon the Seventh Cause of Action, for restitution to Plaintiff and other non-
4 exempt employees of all money and/or property unlawfully acquired by Defendants by means of
5 any acts or practices declared by this Court to be in violation of Business and Professions Code §
6 17200 *et seq.*;

7 8. Upon the Eighth Cause of Action, (1) \$100.00 for each initial violation for each
8 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
9 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
10 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
11 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
12 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
13 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
14 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
15 each initial violation and \$200 for each subsequent violation per employee per pay period for the
16 violations of the Labor Code Sections cited in Labor Code § 2699.5.

17 9. Prejudgment interest on all due and unpaid wages pursuant to California Labor
18 Code § 218.6 and Civil Code §§ 3287 and 3289;

19 10. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
20 Procedure § 1021.5 and all other applicable statutes; and

21 11. For such other and further relief the Court may deem just and proper.

22
23 Dated: May 27, 2021

Respectfully submitted,
STANBURY BROWN LAW

24
25 By:


Daniel J. Brown
Ethan C. Surls
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: May 27, 2021

Respectfully submitted,
STANBURY BROWN LAW

By:



Daniel J. Brown
Ethan C. Surls
Attorney for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

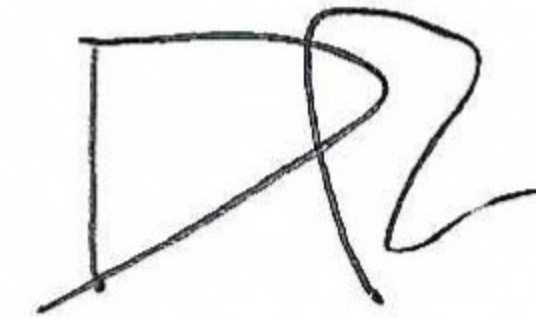
I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On May 27, 2021 I served the document listed below on the parties in this action as follows:

- FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY EMAIL) In accordance with California Code of Civil Procedure section 1010.6 in compliance with the Judicial Council's Appendix I, Emergency Rules Related to Covid-19, Emergency Rule 12, I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 27, 2021 at Venice, California.



Daniel J. Brown

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SERVICE LIST

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