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

MARIA DEL CARMEN ESPINOZA, an
individual,

Plaintiff,

vs.

JUAN C. GUTIERREZ dba J.C.
GUTIERREZ LABOR SERVICE, an
individual; VISALIA CITRUS PACKING
GROUP INC., a California corporation;
VCPG LAND, LLC, a California Limited
Liability Company; and DOES 1 through 100,

Defendants.

Case No.: VCU286326

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);
- (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 ("Complaint") against Juan C. Gutierrez dba J.C.
3 Gutierrez Labor Service, an individual; Visalia Citrus Packing Group, Inc., a California
4 corporation; VCPG Land, LLC, a California Limited Liability Company; and DOES 1 to 100,
5 (collectively "Defendants"), and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff hereby brings this First Amended Representative Action Complaint for
8 recovery of unpaid wages and penalties under California Business & Professions Code § 17200
9 *et. seq.*, Labor Code §§ 201-204, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
10 1198, and 2698 *et seq.*; and Industrial Welfare Commission Wage Order 14 ("Wage Order 14"),
11 in addition to seeking declaratory relief and restitution. This Court has jurisdiction over
12 Defendants' violations of the California Labor Code because the amount in controversy exceeds
13 this Court's jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-204, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et*
28 *seq.*; California Business & Professions Code § 17200 *et seq.* ("Unfair Competition Law"); and

1 Wage Order 14, which sets employment standards for Agricultural Occupations.

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

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

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

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

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

1 similarly situated non-exempt employees.

2 9. Defendants Visalia Citrus Packing Group, Inc. and VCPG Land, LLC are also
3 jointly liable with Defendant Juan C. Gutierrez dba J.C. Gutierrez Labor Service for all civil legal
4 responsibility and civil liability for the payment of wages, including all sums payable to an
5 employee or the state of California based upon any failure to pay wages, pursuant to Labor Code
6 §2810.3.

7 **GENERAL FACTUAL ALLEGATIONS**

8 10. Defendants are in the agricultural business and employ seasonal farm labor
9 employees to harvest agricultural goods, specifically citrus fruits. Plaintiff worked for
10 Defendants as a non-exempt farm labor employee on a seasonal basis from approximately 2019
11 until on or around April 28, 2020 primarily performing the task of picking oranges on Defendants
12 farms. Despite working anywhere from between 7-12 hours per day depending on the weather
13 conditions, Defendants did not employ any actual timekeeping practices and instead compensated
14 Plaintiff and other aggrieved employees on a strictly piece rate basis. At no point during her
15 employment with Defendants was Plaintiff made to confirm or sign off on her hours worked.
16 Defendants have not boarded or lodged Plaintiff during her employment.

17 11. During Plaintiff's employment with Defendants, Plaintiff generally worked
18 Monday through Saturday with varying start and end times depending on weather conditions.
19 Plaintiff's daily hours worked would range from anywhere between 7 and 12 hours per shift.
20 Plaintiff was solely compensated on a piece-rate basis, whereby she was paid a set rate of
21 approximately \$22.00 per box filled with citrus fruit, which varied slightly depending on the size
22 of the fruits. Defendants at no point asked how many hours Plaintiff worked nor did they take
23 any efforts to record them, instead only inquiring as to how many boxes of oranges were filled up
24 for the workday. Plaintiff was not paid an hourly minimum wage if her earned piece-rate
25 compensation did not exceed her minimum wages earned in a pay period as a consequence of
26 Defendants' failure to record Plaintiff's hours worked. Upon information and belief, Defendants
27 did not pay any overtime hours to Plaintiff and other aggrieved employees at any time regardless
28 of whether they were performing work on a piece rate or hourly basis.

1 12. Plaintiff and other aggrieved employees were not authorized to take all legally
2 required rest periods regardless of whether they were working on a piece-rate or hourly basis. On
3 those occasions where Plaintiff and other aggrieved employees performed piece work for
4 Defendants, Defendants routinely failed to pay the correct regular rate for rest and recovery
5 periods. For example, during the pay period between April 6, 2020 and April 11, 2020, Plaintiff
6 was credited for working 12 hours and was compensated a gross amount of \$545.30 making her
7 total compensation minus rest/recovery period compensation \$530.80, ultimately providing for
8 11 total regular hours worked (minus rest/recovery period hours). As such, the proper hourly rate,
9 or average hourly rate (“AHR”) Plaintiff should have been compensated for rest and recovery
10 periods is \$48.25 (\$530.80/11), a rate much higher than the applicable minimum wage. However,
11 as evidenced on her paycheck numbered 9396, Plaintiff was only paid at a rate of \$14.50 per hour
12 for rest and recovery periods, far below what she should have been entitled to. Furthermore,
13 Defendants did not provide Plaintiff and other aggrieved employees with any legally compliant
14 rest periods free of employer control and in the shade of the sun during the entirety of Plaintiff’s
15 employment with Defendants. Despite Defendants’ failure to authorize and permit Plaintiff and
16 other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful
17 practices, Defendants never provided Plaintiff and other aggrieved employees with an hour of pay
18 at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon
19 information and belief, Defendants maintained no payroll code or another mechanism for the
20 payment of rest period premiums in the event Plaintiff and other aggrieved employees were not
21 authorized to take lawful rest periods.

22 13. Defendants have failed to accurately record and compensate Plaintiff and other
23 non-exempt employees who are compensated on a piece-rate basis for non-productive time. *See*
24 *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate
25 compensation structure that does not separately compensate employees for non-productive time
26 violates California minimum wage laws). Plaintiff and other aggrieved employees were required
27 to perform work duties and activities that were not directly compensated on a piece-rate basis.
28 For example, Plaintiff and other aggrieved employees would be made to travel between fields on

1 an almost daily basis and were in no manner compensated for this time. Furthermore, on those
2 occasions where the weather conditions did not permit Plaintiff and other aggrieved employees
3 to commence/continue work, they would have to wait for the conditions to improve before they
4 were permitted to begin/resume their shifts. Additionally, employees were not compensated for
5 bathroom and water breaks, waiting in lines, and/or other mandatory duties that were not directly
6 compensated on a piece-rate basis. Defendants as a matter of policy/practice made no effort to
7 actually record this non-productive time and instead would only compensate Plaintiff and other
8 aggrieved employees for 0.22 hours of non-productive time daily, far less than even the most
9 conservative of estimates of the actual non-productive time that should have been paid. Plaintiff
10 alleges that all this wait time constitutes unproductive worktime which must be compensated
11 under California law. Accordingly, Plaintiff estimates that she and other aggrieved employees
12 worked at least an additional 1.5-2.5 hours per shift of non-productive time. Plaintiff alleges that
13 Defendants have not accurately tracked and compensated employees' non-productive time in
14 compliance with Labor Code § 226.2.

15 14. Defendants have also failed to record employees' total hours worked each
16 workday accurately. Specifically, Defendants' forepersons did not record the hours worked in any
17 fashion apparent to Plaintiff and the other aggrieved employees when they were performing piece
18 rate work. Plaintiff never formally clocked in or clocked out during her shifts and was never
19 provided any sort of timecard reflecting the hours she worked. Rather, Defendants tracked
20 Plaintiff and the aggrieved employees piece rate compensation exclusively while failing to record
21 the actual number of hours worked in any manner. As a result, Defendants failed to ensure that
22 Plaintiff and other aggrieved employees were being paid at least the minimum wage for all hours
23 actually worked, and failed to ensure that Plaintiff and other aggrieved employees received proper
24 overtime wages for all overtime hours worked, in compliance with Wage Order 14.

25 15. Defendants also did not provide Plaintiff and other aggrieved employees with a
26 legally complaint first meal period when they worked shifts in excess of 6.0 hours. Plaintiff and
27 other aggrieved employees were not entitled nor permitted to take legally compliant meal periods
28 in any manner during the entirety of her duration of employment with Defendants. Instead,

1 Plaintiff and other aggrieved employees were instructed to work throughout the entirety of their
2 shifts in an effort to satisfy their supervisors demands and to maximize piece rate compensation.
3 Plaintiff and the other aggrieved employees were not informed by Defendants of their legal right
4 to take duty-free uninterrupted meal periods before the conclusion of their fifth hour of work
5 pursuant to Labor Code Section 512. Defendants were not only aware of, but actively encouraged
6 this practice. Defendants also failed to provide second meal periods when Plaintiff and other
7 aggrieved employees worked shifts in excess of 10.0 hours. Upon information and belief,
8 Defendants' forepersons did not accurately record meal periods in any manner. Despite
9 Defendants' failure to provide Plaintiff and other aggrieved employees with all lawful meal
10 periods due to their uniform and unlawful practices, Defendants never provided Plaintiff and other
11 aggrieved employees with an hour of pay at their regular rate for each meal period violation as
12 required by Labor Code § 226.7.

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

21 **FIRST CAUSE OF ACTION**

22 **MINIMUM WAGE VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

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

25 18. Wage Order 14, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
26 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
27 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
28 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with

1 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
2 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
3 their pay practices to the requirements of the law by failing to pay Plaintiff and other non-exempt
4 employees for all hours actually worked including, but not limited to, all hours they were subject
5 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
6 and Wage Order 14.

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

12 20. As a direct and proximate result of Defendants' unlawful conduct as alleged
13 herein, Plaintiff and other non-exempt employees have sustained economic damages, including
14 but not limited to, unpaid wages and lost interest in an amount to be established at trial, and they
15 are entitled to recover economic and statutory damages and penalties and other appropriate relief
16 as a result of Defendants' violations of the California Labor Code and Wage Order 14.

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

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY ALL OVERTIME WAGE**

25 **(AGAINST AL DEFENDANTS)**

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

27 23. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
28 and 1198, which provide that non-exempt employees are entitled to overtime wages for all

1 overtime hours worked, and provide a private right of action for the failure to pay all overtime
2 compensation for overtime work performed.

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

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

11 26. The foregoing policies and practices are unlawful and create entitlement to
12 recovery by Plaintiff and other non-exempt employees in a civil action for the unpaid amount of
13 overtime premiums owing, including interest thereon, statutory and civil penalties, and attorneys'
14 fees and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage
15 Order 14, and Code of Civil Procedure § 1021.5.

16 **THIRD CAUSE OF ACTION**

17 **MEAL PERIOD VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

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

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

27 29. As a result, Defendants are responsible for paying premium compensation for meal
28 period violations including interest thereon, as well as statutory penalties, civil penalties, and

1 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§
2 3287(b) and 3289.

3 **FOURTH CAUSE OF ACTION**

4 **REST PERIOD VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

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

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

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

12 33. The foregoing violations create an entitlement to recovery by Plaintiff and other
13 non-exempt employees in a civil action for the unpaid rest period wages and the amount of rest
14 period premiums owing, including interest thereon, as well as statutory penalties, civil penalties,
15 and costs of suit according to California Labor Code §§226.2, 226.7, 516, 558, and Civil Code §§
16 3287(b) and 3289.

17 **FIFTH CAUSE OF ACTION**

18 **WAGE STATEMENT VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

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

21 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
23 and other non-exempt employees with accurate, itemized wage statements that included, among
24 other requirements, accurate total gross wages earned, meal and rest period premiums, and total
25 net wages earned in violation of Labor Code §226 *et seq.*

26 36. Defendants' failure to furnish Plaintiff and other non-exempt employees with
27 complete and accurate, itemized wage statements resulted in actual injury, as said failures led to,
28 among other things, the non-payment of all of their meal and rest period premiums, and deprived

1 them of the information necessary to identify discrepancies in Defendants' reported data.

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

6 **SIXTH CAUSE OF ACTION**

7 **WAITING TIME PENALTIES**

8 **(AGAINST ALL DEFENDANTS)**

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

10 39. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
11 an employer to pay all wages immediately at the time of termination of employment in the event
12 the employer discharges the employee or the employee provides at least 72 hours of notice of
13 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
14 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
15 employee's last date of employment.

16 40. Defendants failed to timely pay Plaintiff and other non-exempt employees all final
17 wages due to them at the time of their separation including, among other things, unpaid amounts
18 for rest and recovery periods and non-productive time, underpaid overtime and minimum wages
19 owed, and meal and rest period premium wages. Further, Plaintiff is informed and believes, and
20 based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to
21 fail to pay Plaintiff and other non-exempt employees all earned wages at the end of employment
22 in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure
23 to pay all final wages was willful within the meaning of Labor Code § 203.

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

1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 43. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code § 17200
7 *et seq.*, by failing to pay Plaintiff and other non-exempt employees all overtime and minimum
8 wages, failing to provide all required meal periods, failing to authorize and permit all required
9 rest periods, failing to pay meal and rest period premium wage payments, failing to furnish
10 accurate wage statements, and willfully failing to timely pay Plaintiff other non-exempt
11 employees all final wages upon separation of employment.

12 44. Defendants' utilization of these unfair and/or unlawful business practices deprived
13 Plaintiff and continues to deprive other non-exempt employees of compensation to which they
14 are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair
15 advantage over Defendants' competitors who have been and/or are currently employing workers
16 and attempting to do so in honest compliance with applicable wage and hour laws.

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

21 46. The acts complained of herein occurred within the last four years immediately
22 preceding the filing of the Complaint in this action.

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

28 ///

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

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

49. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code:

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

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

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

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

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

6 f. Failing to timely pay all final wages and compensation earned by Plaintiff
7 and other aggrieved employees at the time of separation in violation of Labor Code §§
8 201, 202, and 203;

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

11 h. Failing to maintain accurate records on behalf of Plaintiff and other
12 aggrieved employees in violation of Labor Code § 1174.

13 50. On March 23, 2020, Plaintiff notified Defendants via certified mail, and notified
14 the California Labor and Workforce Development Agency (“LWDA”) via its website, of
15 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
16 civil penalties under California Labor Code § 2698 et seq. with respect to violations of the
17 California Labor Code identified in Paragraph 49 (a)-(h). Now that sixty-five days have passed
18 from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not
19 provided notice that it intends to investigate the violations, Plaintiff has exhausted her
20 administrative requirements for bringing a claim under the Private Attorneys General Act with
21 respect to these violations.

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

26 **PRAYER**

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

1 1. Upon the First Cause of Action, for payment of minimum wages, liquidated
2 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
3 1197;

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

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

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

10 5. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
11 226, *et seq.*;

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

14 7. Upon the Seventh Cause of Action, for restitution to Plaintiff and other non-
15 exempt employees of all money and/or property unlawfully acquired by Defendants by means of
16 any acts or practices declared by this Court to be in violation of Business and Professions Code §
17 17200 *et seq.*;

18 8. Upon the Eighth Cause of Action, (1) \$100.00 for each initial violation for each
19 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
20 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
21 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
22 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
23 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
24 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
25 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
26 each initial violation and \$200 for each subsequent violation per employee per pay period for the
27 violations of the Labor Code Sections cited in Labor Code § 2699.5.

28 9. Prejudgment interest on all due and unpaid wages pursuant to California Labor

1 Code § 218.6 and Civil Code §§ 3287 and 3289;

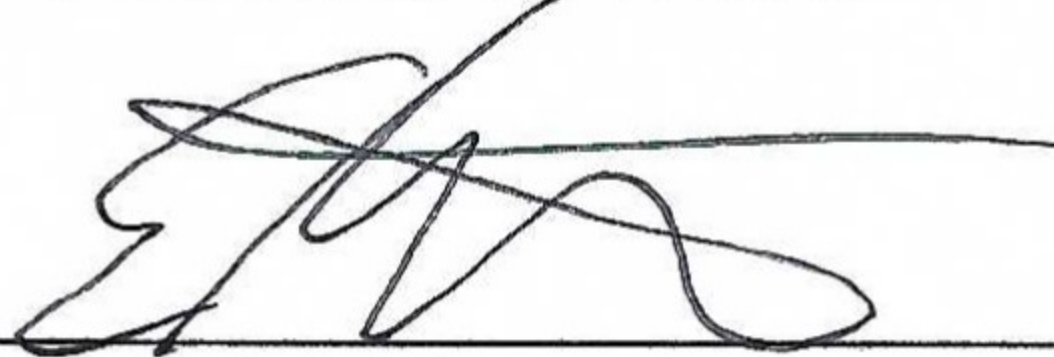
2 10. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
3 Procedure § 1021.5 and all other applicable statutes; and

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

5
6 Dated: May 27, 2021

Respectfully submitted,
STANBURY BROWN LAW

7
8 By:



Daniel J. Brown
Ethan C. Surls
Attorney for Plaintiff

9
10 **DEMAND FOR JURY TRIAL**

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

12
13 Dated: May 27, 2021

Respectfully submitted,
STANBURY BROWN LAW

14
15 By:



Daniel J. Brown
Ethan C. Surls
Attorney for Plaintiff

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PROOF OF SERVICE

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

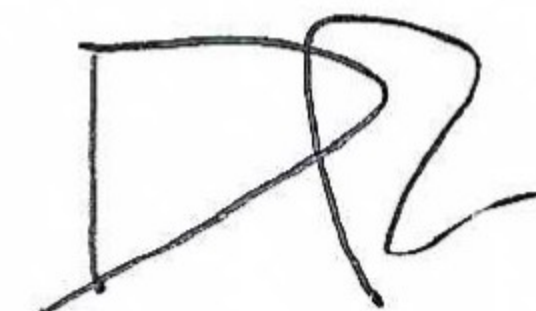
I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

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

SERVICE LIST

THE SAQUI LAW GROUP

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Rebecca A. Hause-Schultz, Esq.

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