

ELECTRONICALLY FILED
Merced Superior Court
5/24/2021 2:38 PM
Amanda Toste
Clerk of the Superior Court
By: Nengsy Moua, Deputy

Robert Drexler (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
Molly DeSario (SBN 230763)
Molly.DeSario@CapstoneLawyers.com
Jonathan Lee (SBN 267146)
Jonathan.Lee@CapstoneLawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Jose Aguilera

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

JOSE AGUILERA, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

DOLE PACKAGED FOODS, LLC, a
California limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 21CV-00817

**FIRST AMENDED COMPLAINT – PAGA
ENFORCEMENT ACTION**

(1) Civil Penalties for Violations of California
Labor Code, Pursuant to PAGA, §§ 2698, *et*
seq.;

Jury Trial Demanded

1 Plaintiff Jose Aguilera, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the California Labor Code Private Attorneys
5 General Act, sections 2698, *et seq.* (“PAGA”) to recover civil penalties and any other available
6 relief on behalf of Plaintiff, the State of California, and other current and former employees who
7 worked for Defendants in California as non-exempt, hourly paid employees and received at least
8 one wage statement and against whom one or more violations of any provision in Division 2
9 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the
10 applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth in
11 this complaint, at any time between one year prior to the filing of the pre-filing written notice
12 to the Labor and Workforce Development Agency (“LWDA”) in this case on March 15, 2021,
13 until judgment (“non-party Aggrieved Employees”). The monetary civil penalties sought by
14 Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established
15 according to proof at trial. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statutes under which this action is brought do not
17 specify any other basis for jurisdiction. Plaintiff’s share of civil penalties sought in this action
18 does not exceed \$75,000.

19 2. This Court has jurisdiction over Defendants because Defendants are either
20 citizens of California, have sufficient minimum contacts in California, or otherwise intentionally
21 avail themselves of the California market so as to render the exercise of jurisdiction over them
22 by the California courts consistent with traditional notions of fair play and substantial justice.
23 There is no basis for federal diversity jurisdiction in this action given that the State of
24 California, as the real party in interest in this action, is not a “citizen” for purposes of satisfying
25 diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013).
26 *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in controversy
27 requirement for federal diversity jurisdiction in this action, and that diversity jurisdiction cannot
28 be established when Plaintiff’s share of the civil penalties attributable to violations personally

1 suffered are less than \$75,000. *Id.* at 1122.

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

5 4. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys
6 General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys
7 general their current or former employers for various civil penalties for violations of various
8 provisions in the California Labor Code.

9 **THE PARTIES**

10 5. Plaintiff Jose Aguilera is a resident of Merced, in Merced County, California.
11 Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately
12 1995 to March 2020. Plaintiff worked for Defendants as a Machine Operator at their location in
13 Atwater, California. During his employment, Plaintiff typically worked nine (9) hours or more
14 per day, and five (5) or more days per week. Plaintiff’s primary job duties included, without
15 limitation, operating machinery, monitoring and making running adjustments and repairs to
16 machinery, operating forklifts, and washing and cleaning machinery.

17 6. DOLE PACKAGED FOODS, LLC was and is, upon information and belief, a
18 California limited liability company, and at all times hereinafter mentioned, an employer whose
19 employees are engaged throughout this county, the State of California, or the various states of
20 the United States of America.

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

25 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
26 were the partners, agents, owners, or managers of DOLE PACKAGED FOODS, LLC at all
27 relevant times.

28 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the

1 acts and omissions alleged herein was performed by, or is attributable to, DOLE PACKAGED
2 FOODS, LLC; and/or DOES 1 through 10 (collectively, “Defendants” or “DOLE”), each acting
3 as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of
4 the other co-Defendants and was acting within the course and scope of such agency,
5 employment, joint venture, or concerted activity with legal authority to act on the others’ behalf.
6 The acts of any and all Defendants were in accordance with, and represent, the official policy of
7 Defendants.

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

12 11. Plaintiff is informed and believes, and thereon alleges, that each of said
13 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
14 omissions, occurrences, and transactions alleged herein.

15 **PAGA REPRESENTATIVE ALLEGATIONS**

16 12. Defendants are packaged food suppliers offering a wide range of packaged fruit
17 products such as fruit juices, frozen fruit, and packed shelf stable fruit, and operate five (5)
18 production facilities in California. Upon information and belief, Defendants maintain a single,
19 centralized Human Resources (“HR”) department at their company headquarters in Westlake
20 Village, California, which is responsible for the recruiting and hiring of new employees, and
21 communicating and implementing Defendants’ company-wide policies, including timekeeping
22 policies and meal and rest period policies, to employees throughout California.

23 13. In particular, Plaintiff and other non-party Aggrieved Employees, on information
24 and belief, received the same standardized documents and/or written policies. Upon
25 information and belief, the usage of standardized documents and/or written policies, including
26 new-hire documents, indicate that Defendants dictated policies at the corporate level and
27 implemented them company-wide, regardless of their employees’ assigned locations or
28 positions. Upon information and belief, Defendants set forth uniform policies and procedures in

1 several documents provided at an employee's time of hire.

2 14. Upon information and belief, Defendants maintain a centralized Payroll
3 department at their company headquarters in Westlake Village, California, which processes
4 payroll for all non-exempt, hourly paid employees working for Defendants at their various
5 locations and jobsites in California, including Plaintiff and other non-party Aggrieved
6 Employees. Based upon information and belief, Defendants issue the same formatted wage
7 statements to all non-exempt, hourly paid employees in California, irrespective of their work
8 locations. Upon information and belief, Defendants process payroll for departing employees in
9 the same manner throughout the State of California, regardless of the manner in which each
10 employee's employment ends.

11 15. Defendants continue to employ non-exempt or hourly paid employees in
12 California.

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

17 17. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
18 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
19 were not recorded.

20 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 receive certain wages for overtime compensation and that they were not receiving certain wages
23 for overtime compensation.

24 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that other non-party Aggrieved Employees were entitled to be paid at a
26 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
27 all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
28 compensation.

1 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 receive at least minimum wages for compensation and that they were not receiving at least
4 minimum wages for work that was required to be done off-the-clock. In violation of the
5 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
6 least minimum wages for work done off-the-clock.

7 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 meal periods in accordance with the California Labor Code and applicable IWC Wage Order or
10 payment of one (1) additional hour of pay at their regular rates of pay when they were not
11 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other
12 non-party Aggrieved Employees were not provided with all meal periods or payment of one (1)
13 additional hour of pay at their regular rates of pay when they did not receive a timely,
14 uninterrupted, thirty (30) minute meal period.

15 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest
17 periods in accordance with the California Labor Code and applicable IWC Wage Order or
18 payment of one (1) additional hour of pay at their regular rates of pay when they were not
19 authorized and permitted to take a compliant rest period. In violation of the California Labor
20 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to
21 take compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
22 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
23 they were not authorized and permitted to take a compliant rest period.

24 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 receive complete and accurate wage statements in accordance with California law. In violation
27 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
28 provided complete and accurate wage statements.

1 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that they had a duty to maintain accurate and complete payroll records in
3 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
4 knowingly, and intentionally failed to do so.

5 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 timely payment of all wages earned upon termination of employment. In violation of the
8 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
9 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
10 and/or meal and rest period premiums, within permissible time periods.

11 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 timely payment of wages during their employment. In violation of the California Labor Code,
14 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
15 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
16 premiums, within permissible time periods.

17 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that other non-party Aggrieved Employees were entitled to receive one day
19 of rest in seven consecutive days of work. In violation of the California Labor Code,
20 Defendants scheduled other non-party Aggrieved Employees to work more than seven
21 consecutive days in a workweek.

22 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 receive full reimbursement for all business-related expenses and costs they incurred during the
25 course and scope of their employment and that they did not receive full reimbursement of
26 applicable business-related expenses and costs incurred.

27 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew or should have known that Defendants had a duty to provide

1 other non-party Aggrieved Employees with written notice of the material terms of their
2 employment with Defendants as required by the California Wage Theft Prevention Act, but
3 willfully, knowingly, and intentionally failed to do so.

4 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
6 and other non-party Aggrieved Employees for all hours worked, and that Defendants had the
7 financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to
8 do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they
9 were properly denied wages, all in order to increase Defendants' profits.

10 31. At all times herein set forth, PAGA provides that any provision of law under
11 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
12 assessed and collected by the LWDA for violations of the California Labor Code and
13 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
14 civil action brought on behalf of themselves and other current or former employees pursuant
15 to procedures outlined in California Labor Code section 2699.3.

16 32. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
17 person who was employed by the alleged violator and against whom one or more of the
18 alleged violations was committed."

19 33. Plaintiff and other current and former employees of Defendants are "aggrieved
20 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
21 or former employees and one or more of the alleged violations were committed against them.

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

- 25 (a) The aggrieved employee or representative shall give written notice by
26 online filing with the LWDA and by certified mail to the employer of
27 the specific provisions of the California Labor Code alleged to have
28 been violated, including the facts and theories to support the alleged

violation.

- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation ("LWDA's Notice") within sixty (60) calendar days of the postmark date of the aggrieved employee's notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee's notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

35. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those listed in Section 2699.5 after the following requirements have been met:

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

representative and by online filing with the LWDA if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to Section 2699.

36. On March 15, 2021, Plaintiff provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff’s written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff’s written notice and assigned Plaintiff PAGA Case Number LWDA-CM-825881-21. A true and correct copy of Plaintiff’s written notice to the LWDA and Defendants is attached hereto as “Exhibit 1.”

37. As of the filing date of this complaint, over 65 days have passed since Plaintiff sent the notice described above to the LWDA, and the LWDA has not responded that it intends to investigate Plaintiff’s claims and Defendants have not cured the violations.

38. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

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

to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties under Labor Code section 558 for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order.

40. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved Employees’ rights by violating various sections of the California Labor Code as set forth above.

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

42. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

44. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code

1 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
2 226(a), 226.7, 246, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1198, and 2802. Labor Code
3 section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties
4 for violations of those Labor Code sections not found in section 2699.5, including sections
5 516, 1182.12, and 2810.5.

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

- 8 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
9 Wage Order for Defendants' failure to compensate Plaintiff and other
10 non-party Aggrieved Employees with all required overtime pay and
11 failure to properly calculate the overtime rates paid to other non-party
12 Aggrieved Employees, as set forth below;
- 13 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
14 applicable IWC Wage Order for Defendants' failure to compensate
15 Plaintiff and other non-party Aggrieved Employees with at least
16 minimum wages for all hours worked, as set forth below;
- 17 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
18 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
19 and other non-party Aggrieved Employees with meal periods, as set
20 forth below;
- 21 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
22 IWC Wage Order for Defendants' failure to authorize and permit
23 Plaintiff and other non-party Aggrieved Employees to take rest periods,
24 as set forth below;
- 25 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
26 wage order for failure to provide accurate and complete wage statements
27 to Plaintiff and other non-party Aggrieved Employees, as set forth
28 below;

- 1 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
2 IWC Wage Order for failure to maintain payroll records, as set forth
3 below;
- 4 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
5 earned wages upon termination, as set forth below;
- 6 (h) Violation of Labor Code section 204 for failure to pay all earned wages
7 during employment, as set forth below;
- 8 (i) Violation of Labor Code sections 551 and 552 for failure to provide one
9 day's rest in seven days of work, as set forth below;
- 10 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
11 and other non-party Aggrieved Employees for all business expenses
12 necessarily incurred, as set forth below; and
- 13 (k) Violation of Labor Code section 2810.5 for failure to provide other non-
14 party Aggrieved Employees with written notice of the material terms of
15 their employment, as set forth below.

16 **FAILURE TO PAY OVERTIME**

17 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

18 46. Labor Code section 1198 makes it illegal to employ an employee under
19 conditions of labor that are prohibited by the applicable wage order. California Labor Code
20 section 1198 requires that "... the standard conditions of labor fixed by the commission shall be
21 the ... standard conditions of labor for employees. The employment of any employee ... under
22 conditions of labor prohibited by the order is unlawful."

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

27 48. Specifically, the applicable IWC Wage Order provides that Defendants are and
28 were required to pay Plaintiff and other non-party Aggrieved Employees working more than

1 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-
2 half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
3 hours in a workweek.

4 49. The applicable IWC Wage Order further provides that Defendants are and were
5 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
6 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
7 An employee's regular rate of pay includes all remuneration for employment paid to, or on
8 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

9 50. California Labor Code section 510 codifies the right to overtime compensation at
10 one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
11 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
12 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
13 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
14 the seventh (7th) day of work.

15 51. During the relevant time period, Defendants willfully failed to pay all overtime
16 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
17 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
18 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
19 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not
20 recorded.

21 52. First, during the relevant period, Defendants had, and continue to have, a
22 company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out
23 times in their timekeeping system to the nearest quarter (0.25) of an hour. Defendants' rounding
24 policy resulted in the failure to compensate Plaintiff and other non-party Aggrieved Employees
25 fully for all hours worked, causing Plaintiff and other non-party Aggrieved Employees to not be
26 paid overtime wages for all of the overtime hours they actually worked. Defendants' policy of
27 rounding is unfair and has, over time, resulted in the underpayment of wages to Plaintiff and
28 other non-party Aggrieved Employees. To the extent Defendants' rounding policy has taken

1 away time worked that was eligible for overtime, Plaintiff and other non-party Aggrieved
2 Employees were denied overtime pay for all hours worked.

3 53. Second, during the relevant time period, Defendants had, and continue to have a
4 company-wide policy and/or practice of discouraging and impeding Plaintiff and other non-
5 party Aggrieved Employees from recording hours worked that were outside of their scheduled
6 shifts, in order to limit the amount of overtime employees could accrue. On information and
7 belief, this limitation on overtime accrual was based on a company-wide policy of staffing
8 locations strictly based on the labor hours or labor budget set by corporate. This policy of
9 limiting overtime, coupled with Defendants' policies of understaffing and assigning heavy
10 workloads, led Plaintiff and other non-party Aggrieved Employees to work off-the-clock before
11 and after their scheduled shift times in order to complete their assigned tasks. For example,
12 Defendants required Plaintiff to start preparing the juice concentrate machine about 30 minutes
13 before he was permitted to clock in at his scheduled shift start-time, approximately three (3)
14 times per month. Additionally, approximately once per month, Defendants' supervisors
15 required that Plaintiff continue performing work duties after he clocked out, such as washing
16 and cleaning machinery and/or assisting other departments so Defendants' entire production
17 facility would be able to meet production demands. Defendants failed to track this time spent
18 working before and after scheduled shifts, and Plaintiff and other non-party Aggrieved
19 Employees received no compensation for this time.

20 54. Third, as stated, Defendants had, and continue to have, a uniform practice and/or
21 policy of understaffing their locations strictly based on the labor hours or labor budget set by the
22 corporate office. Defendants' use of a labor budget resulted in chronic understaffing, such that
23 there were too few employees on duty to handle the heavy workloads and provide meal period
24 coverage. Also, Defendants have systematically, and on a company-wide basis, understaffed
25 their locations by adopting a single-staffing model for some of their positions, pursuant to their
26 labor budget practices, thereby failing to provide adequate meal period coverage to permit those
27 employees to take compliant meal periods. Moreover, Defendants had, and continue to have, a
28 practice of failing to schedule meal periods, which further caused Plaintiff and other non-party

1 Aggrieved Employees to not be relieved of their duties for compliant meal periods. For
2 example, Defendants' management instituted a policy requiring that machine operators monitor
3 and make running adjustments and/or repairs to machinery at all times, including during unpaid
4 meal periods. At the same time, Defendants adhered to a single-staffing model for the machine
5 operator position pursuant to their labor budget, which exacerbated the lack of meal period
6 coverage. As a result, Plaintiff was forced to forego meal periods once per week in order to
7 complete the tasks and duties Defendants assigned to him. In addition, Plaintiff would have his
8 meal periods interrupted and cut short twice per month when machinery required adjustments
9 and/or repairs. Consequently, Plaintiff and other non-party Aggrieved Employees were required
10 to work through and/or had their unpaid meal periods interrupted in order to complete their
11 assigned workloads.

12 55. Additionally, due to the lack of meal period coverage and policy requiring that
13 machine operators monitor and make running adjustments and/or repairs to machinery at all
14 times, Defendants required Plaintiff and other non-party Aggrieved Employees to remain on or
15 near the work premises for their meal periods. Because Plaintiff and other non-party Aggrieved
16 Employees were restricted from leaving the work premises during meal periods, they were
17 denied the ability to use their meal periods freely for their own purposes. For example, Plaintiff
18 and other non-party Aggrieved Employees were unable to run personal errands or pick up food
19 at restaurants because they were unable to leave the work premises. Thus, Defendants
20 effectively maintained control over Plaintiff and other non-party Aggrieved Employees during
21 meal periods.

22 56. Fourth, Defendants pressured Plaintiff and other non-party Aggrieved Employees
23 to clock out for meal periods and/or adjusted employee time records to reflect compliant meal
24 periods, regardless of whether they had received a compliant meal period, in order to strictly
25 limit meal penalties that Defendants would otherwise owe. For example, Plaintiff was pressured
26 by Defendants' management to clock out and record compliant meal periods on shifts when he
27 had not, in fact, received a compliant meal period. Thus, Plaintiff and other non-party
28 Aggrieved Employees performed work during meal periods and received no compensation for

1 this time.

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

10 58. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
11 correct overtime rates for the recorded overtime hours that they generated. In addition to an
12 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
13 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
14 California Labor Code, Defendants failed to incorporate all remunerations, including incentive
15 pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes
16 of calculating the overtime wage rates. Therefore, during times when other non-party
17 Aggrieved Employees worked overtime and received these other forms of pay, Defendants
18 failed to pay all overtime wages by paying a lower overtime rate than required.

19 59. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
20 the balance of overtime compensation as required by California law, violates the provisions of
21 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
22 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558
23 and/or 2699(a), (f), and (g).

24 **FAILURE TO PAY MINIMUM WAGES**

25 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

26 60. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
27 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
28 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.

1 Compensable work time is defined in IWC Wage Order No. 1-2001 as “the time during which
2 an employee is subject to the control of an employer, and includes all the time the employee is
3 suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8,
4 § 11010(2)(G) (defining “Hours Worked”).

5 61. As set forth above, during the relevant time period, due to Defendants’ policy of
6 rounding Plaintiff’s and other non-party Aggrieved Employees’ clock-in and clock-out times to
7 the quarter-hour in their timekeeping system, Defendants failed to compensate Plaintiff and
8 other non-party Aggrieved Employees fully for all hours worked.

9 62. As also set forth above, during the relevant time period, as a result of
10 Defendants’ policies of limiting the amount of overtime employees could accrue, coupled with
11 the practice of utilizing labor budgets, resultant single-staffing and/or understaffing, assignment
12 of heavy workloads, failure to schedule meal periods, requiring employees to stay on or near the
13 work premises during meal periods and subsequent lack of meal period coverage, Plaintiff and
14 other non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods
15 to which they were entitled and were required to work off-the-clock before and after their
16 scheduled shifts. Additionally, as stated, in order to prevent employees from accruing meal
17 period penalties, Defendants’ management pressured employees to clock out for meal periods to
18 reflect compliant meal periods, but required them to continue working. Thus, Defendants
19 systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours
20 worked during unpaid meal periods because these hours were not always correctly recorded.

21 63. Defendants did not pay minimum wages for all hours worked by Plaintiff and
22 other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
23 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
24 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
25 1197, and 1198.

26 64. Defendants’ failure to pay Plaintiff and other non-party Aggrieved Employees
27 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
28 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil

penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROVIDE AND RECORD MEAL PERIODS
VIOLATIONS OF LABOR CODE, SECTIONS 226.7, 512(a), 516, AND 1198

65. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and non-party Aggrieved Employees' employment by Defendants.

66. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

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

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

69. As stated, during the relevant time period, Defendants had, and continue to have, company-wide policies and/or practices of single-staffing and understaffing their locations pursuant to their labor budget practices while assigning heavy workloads, and failing to schedule meal periods, resulting in a failure to provide Plaintiff and other non-party Aggrieved Employees with adequate meal period coverage and prevented Plaintiff and other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were

entitled. For example, Plaintiff was required to take his meal periods late after having worked in excess of five (5) hours or more into his shift approximately twice per week, in order to monitor, make adjustments to, and/or repair machinery.

70. Furthermore, as stated above, in conjunction with these policies and/or practices, Defendants required Plaintiff and other non-party Aggrieved Employees to remain on or near the work premises for their meal periods. Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving the work premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, Defendants effectively maintained control over Plaintiff and other non-party Aggrieved Employees during meal periods. Consequently, Plaintiff and other non-party Aggrieved Employees suffered interrupted meal periods and/or missed meal periods. Additionally, as stated, Defendants' management pressured Plaintiff and other non-party Aggrieved Employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by Defendants.

71. Additionally, Defendants did not provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Plaintiff was never provided a second meal period even though he regularly worked shifts of ten (10) hours or more. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

72. At all times herein mentioned, Defendants knew or should have known that, as a result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. Defendants further knew or should have known that Defendants did not pay Plaintiff and other non-party Aggrieved Employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

73. Moreover, Defendants engaged in a company-wide practice and/or policy of not

1 paying all meal period premiums owed when compliant meal periods are not provided. Because
2 of Defendants' practices and/or policies, Plaintiff and other non-party Aggrieved Employees
3 have not received premium pay for all missed, late, and interrupted meal periods. Alternatively,
4 to the extent that Defendants did pay other non-party Aggrieved Employees for missed, late, and
5 interrupted meal periods, Defendants did not pay other non-party Aggrieved Employees at the
6 correct rate of pay for premiums because Defendants systematically failed to include all forms
7 of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
8 remuneration, in the regular rate of pay.

9 74. Defendants' conduct violates the applicable IWC Wage Order, and California
10 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
11 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558
12 and/or 2699(a), (f), and (g).

13 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
14 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

15 75. At all relevant times herein set forth, the applicable IWC Wage Order and
16 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
17 non-party Aggrieved Employees' employment by Defendants.

18 76. At all relevant times, the applicable IWC Wage Order provides that "[e]very
19 employer shall authorize and permit all employees to take rest periods, which insofar as
20 practicable shall be in the middle of each work period" and that the "rest period time shall be
21 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
22 hours or major fraction thereof" unless the total daily work time is less than three and one-half
23 (3 ½) hours.

24 77. At all relevant times, California Labor Code section 226.7 provides that no
25 employer shall require an employee to work during any rest period mandated by an applicable
26 order of the California IWC. To comply with its obligation to authorize and permit rest periods
27 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
28 must "relinquish any control over how employees spend their break time, and relieve their

1 employees of all duties—including the obligation that an employee remain on call. A rest
2 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
3 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code
4 section 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover
5 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
6 that a required rest period was not authorized and permitted.

7 78. During the relevant time period, Defendants regularly failed to authorize and
8 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period
9 per each four (4) hour period worked or major fraction thereof. As with meal periods,
10 Defendants’ company-wide policy and/or practice of understaffing while assigning heavy
11 workloads prevented Plaintiff and other non-party Aggrieved Employees from being relieved of
12 all duty in order to take compliant rest periods. Additionally, Defendants failed to a schedule
13 rest periods at all, which, coupled with Defendants’ failure to provide adequate rest period
14 coverage, further led to Plaintiff and other non-party Aggrieved Employees not being authorized
15 and permitted to take compliant rest periods.

16 79. Furthermore, Defendants maintained a company-wide practice and/or policy
17 requiring that Plaintiff and other non-party Aggrieved Employees remain on Defendants’
18 premises during their rest periods. Because Plaintiff and other non-party Aggrieved Employees
19 were restricted from leaving the premises during rest periods, they were denied the ability to use
20 their rest periods freely for their own purposes, such as running personal errands. Thus,
21 Defendants effectively maintained control over Plaintiff and other non-party Aggrieved
22 Employees during rest periods.

23 80. As a result of Defendants’ practices and policies, Plaintiff and other non-party
24 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
25 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
26 were entitled. For example, Plaintiff missed his rest periods at least once per week or had his
27 rest periods interrupted or cut short twice per month in order to complete all of the work-related
28 duties assigned to him.

1 81. Defendants have also engaged in a company-wide policy and/ or practice of not
2 paying rest period premiums owed when compliant rest periods are not authorized and
3 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
4 Employees have not received premium pay for all missed rest periods. Alternatively, to the
5 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour of
6 premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
7 Employees at the correct rate of pay for premiums because Defendants failed to include all
8 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
9 remuneration, in the regular rate of pay.

10 82. Defendants' conduct violates the applicable IWC Wage Order and California
11 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
12 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
13 2699(a), (f), and (g)..

14 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
15 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

16 83. At all relevant times herein set forth, California Labor Code section 226(a)
17 provides that every employer shall furnish each of his or her employees an accurate and
18 complete itemized wage statement in writing, including, but not limited to, the name and
19 address of the legal entity that is the employer, the inclusive dates of the pay period, total hours
20 worked, and all applicable rates of pay.

21 84. At all relevant times, Defendants have knowingly and intentionally provided
22 Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate
23 wage statements. For example, Defendants issued uniform wage statements to Plaintiff and
24 Other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours
25 worked; net wages earned; and all applicable hourly rates in effect during the pay period,
26 including overtime rates of pay, and the corresponding number of hours worked at each hourly
27 rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

28 85. Because Defendants did not record the time Plaintiff and other non-party

1 Aggrieved Employees spent working off-the-clock, improperly rounded their total hours
2 worked, and deducted time from their records for meal periods that were interrupted and/or
3 missed (and therefore time for which they should have been paid), Defendants did not list the
4 correct amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved
5 Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the
6 same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff
7 and other non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list
8 the applicable hourly rates of pay in effect during the pay period and the corresponding accurate
9 number of hours worked at each hourly rate, in violation of section 226(a)(9).

10 86. Also, because Defendants did not calculate other non-party Aggrieved
11 Employees' regular rate of pay correctly for purposes of paying overtime, Defendants did not
12 list the correct amount of gross wages in compliance with section 226(a)(1). For the same
13 reason, Defendants also failed to list the correct amount of net wages in violation of section
14 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during
15 the pay period, namely, correct overtime rates of pay, in violation of section 226(a)(9).

16 87. The wage statement deficiencies also include, among other things, failing to list
17 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
18 piece-rate basis; failing to list all deductions; failing to list the name of the employee and only
19 the last four digits of his or her social security number or an employee identification number
20 other than a social security number; failing to list the name and address of the legal entity that is
21 the employer; failing to list the inclusive dates of the period for which employees were paid;
22 and/or failing to state all hours worked as a result of not recording or stating the hours they
23 worked off-the-clock.

24 88. California Labor Code section 1198 provides that the maximum hours of work
25 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
26 forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
27 employment of any employees for longer hours than those fixed by the order or under
28 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage

1 Order, employers are required to keep accurate time records showing when the employee begins
2 and ends each work period and meal period. During the relevant time period, Defendants failed,
3 on a company-wide basis, to keep accurate records of work period and meal period start and
4 stop times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198.
5 Also, as stated, Defendants engaged in a company-wide practice and/or policy of falsifying
6 Plaintiff's and other non-party Aggrieved Employees' time records by pressuring Plaintiff and
7 other non-party Aggrieved Employees record that compliant meal periods were taken regardless
8 of if or when meal periods were actually taken, and thereby failed to keep accurate records of
9 meal start and end times for Plaintiff and other non-party Aggrieved Employees. Furthermore,
10 in light of Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees
11 with second 30-minute meal periods to which they were entitled, Defendants kept no records of
12 meal start and end times for second meal periods.

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

24 90. Defendants' conduct violates California Labor Code sections 226(a), 1174(d),
25 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
26 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

27 //

28 //

FAILURE TO PAY WAGES UPON TERMINATION
VIOLATION OF LABOR CODE SECTIONS 201 AND 202

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

92. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved Employees who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

93. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES DURING EMPLOYMENT
VIOLATION OF LABOR CODE SECTION 204

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

95. At all times relevant herein, Labor Code section 204 provides that all wages

1 earned by any person in any employment between the sixteenth (16th) and the last day,
2 inclusive, of any calendar month, other than those wages due upon termination of an employee,
3 are due and payable between the first (1st) and the tenth (10th) day of the following month.

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

10 97. During the relevant time period, Defendants willfully failed to pay Plaintiff and
11 other non-party Aggrieved Employees all wages due including, but not limited to, overtime
12 wages, minimum wages, and/or meal and rest period premiums within the time periods specified
13 by California Labor Code section 204.

14 98. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees all
15 wages due violates Labor Code section 204. Plaintiff and other non-party Aggrieved
16 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 210
17 and/or 2699(a), (f), and (g).

18 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN**
19 **VIOLATION OF LABOR CODE SECTIONS 551, 552, AND 558**

20 99. At all relevant times herein, California Labor Code section 551 provides that
21 every person employed in any occupation of labor is entitled to one day's rest in seven.
22 Additionally, California Labor Code section 552 prohibits employers from requiring
23 employees to work more than six consecutive days without a day of rest.

24 100. At all relevant times herein set forth, California Labor Code section 556
25 exempts an employer from the day-of-rest requirement when the total hours worked by an
26 employee do not exceed 30 hours in any week or six hours in any one day thereof.

27 101. Labor Code section 558(a) provides "[a]ny employer or other person acting on
28 behalf of an employer who violates, or causes to be violated, a section of this chapter or any

1 provision regulating hours and days of work in any order of the Industrial Welfare
2 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
3 dollars (\$50) for each underpaid employee for each pay period for which the employee was
4 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
5 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
6 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
7 to any other civil or criminal penalty provided by law.”

8 102. During the relevant time period, on information and belief, Defendants
9 scheduled other non-party Aggrieved Employees to work eight (8) or more hours per day and
10 more than seven (7) consecutive days in a workweek. Because other non-party Aggrieved
11 Employees worked over 30 hours per week and over six (6) hours per day in a workweek, they
12 were not exempt from the day-of-rest requirement. To the extent that other non-party
13 Aggrieved Employees may have signed purported waivers of their right to a day’s rest in
14 seven, such waivers are invalid.

15 103. Thus, during the relevant time period, and in violation of Labor Code sections
16 551 and 552, Defendants caused other non-party Aggrieved Employees to work more than six
17 days in seven. Other non-party Aggrieved Employees are therefore entitled to recover civil
18 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

19 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

20 **VIOLATION OF LABOR CODE SECTION 2802**

21 104. At all times herein set forth, California Labor Code section 2802 provides that an
22 employer must reimburse employees for all necessary expenditures and losses incurred by the
23 employee in the performance of his or her job. The purpose of Labor Code section 2802 is to
24 prevent employers from passing off their cost of doing business and operating expenses on to
25 their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
26 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: “[w]hen tools or
27 equipment are required by the employer or are necessary to the performance of a job, such tools
28 and equipment shall be provided and maintained by the employer, except that an employee

1 whose wages are at least two (2) times the minimum wage provided herein may be required to
2 provide and maintain hand tools and equipment customarily required by the trade or craft.”

3 105. Defendants, on a company-wide basis, required Plaintiff and other non-party
4 Aggrieved Employees to purchase their own supplies and tools. For example, Plaintiff was
5 required to spend approximately \$40.00 on a flashlight, \$20.00 on pliers, and \$30.00 on a
6 wrench in order to carry out his work-related duties. Although Defendants required Plaintiff
7 and other non-party Aggrieved Employees to purchase their own supplies and tools for use on
8 the job, Defendants did not reimburse them for these expenses.

9 106. Defendants could have provided Plaintiff and other non-party Aggrieved
10 Employees with the actual tools for use on the job, such as supplies/tools to be used for
11 fulfilling work-related tasks, or could have reimbursed employees for the costs of their
12 supplies/tool expenses. Instead, Defendants passed these operating costs off onto Plaintiff and
13 other non-party Aggrieved Employees. At all relevant times, Plaintiff did not earn at least two
14 (2) times the minimum wage.

15 107. Defendants’ company-wide policy and/or practice of passing on their operating
16 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
17 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and other
18 non-party Aggrieved Employees for necessary business-related expenses and costs.

19 108. Plaintiff and other non-party Aggrieved Employees are entitled to recover civil
20 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

21 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
22 **EMPLOYMENT**

23 **VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

24 109. California’s Wage Theft Prevention Act was enacted to ensure that employers
25 provide employees with basic information material to their employment relationship at the
26 time of hiring, and to ensure that employees are given written and timely notice of any
27 changes to basic information material to their employment. Codified at California Labor
28 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an

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

7 110. During the relevant time period, Defendants failed to provide other non-party
8 Aggrieved Employees with written notice that lists all the requisite information set forth in
9 Labor Code section 2810.5(a)(1)(A)-(C).

10 111. Defendants' failure to provide other non-party Aggrieved Employees with
11 written notice of basic information regarding their employment with Defendants is in violation
12 of California Labor Code section 2810.5. Other non-party Aggrieved Employees are therefore
13 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

14 **REQUEST FOR JURY TRIAL**

15 Plaintiff requests a trial by jury.

16 **PRAYER FOR RELIEF**

17 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
18 judgment against Defendants, jointly and severally, as follows:

19 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
20 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

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

22 2. That the Court declare, adjudge and decree that Defendants violated the
23 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
24 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
25 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
26 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
27 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
28 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all

1 earned wages upon termination); 204 (by failing to timely pay all earned wages during
2 employment); 551 and 552 (by failing to provide one day's rest in seven days of work); 2802
3 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of
4 material terms of employment);

5 3. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
6 558, 1174.5, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201,
7 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802,
8 and 2810.5;

9 4. For attorneys' fees and costs pursuant to California Labor Code section
10 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
11 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d),
12 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

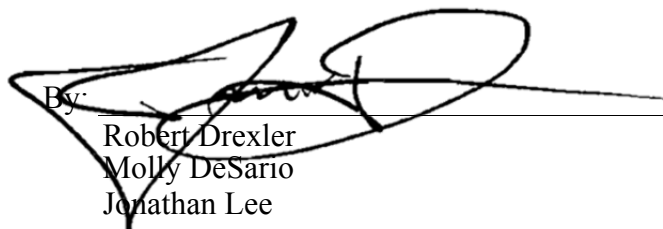
13 5. For pre-judgment and post-judgment interest as provided by law; and

14 6. For such other and further relief as the Court may deem equitable and
15 appropriate.

16
17 Dated: May 24, 2021

Respectfully submitted,

Capstone Law APC

19
20 
21 By: Robert Drexler
22 Molly DeSario
23 Jonathan Lee

Attorneys for Plaintiff Jose Aguilera

Exhibit 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ALEXANDER LIMA
310.712.8142 Direct
Alexander.Lima@capstonelawyers.com

March 15, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Jose Aguilera v. Dole Packaged Foods, LLC*

Dear PAGA Administrator:

This office represents Jose Aguilera in connection with his claims under the California Labor Code. Mr. Aguilera was an employee of DOLE PACKAGED FOODS, LLC ("DOLE").

The employer may be contacted directly at the address below:

DOLE PACKAGED FOODS, LLC
3059 TOWNSGATE ROAD, SUITE 400
WESTLAKE VILLAGE, CA 91361

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

DOLE employed Mr. Aguilera as a non-exempt, hourly paid Machine Operator from approximately 1995 to March 2020. Mr. Aguilera worked for DOLE at its location in Atwater, California. During his employment, he typically worked nine (9) hours or more per day, and five (5) days or more per week. At the time his employment ended, Mr. Aguilera was compensated approximately \$18.00 per hour. His job duties included, without limitation, operating machinery, monitoring and making running adjustments and repairs to machinery, operating forklifts, and washing and cleaning machinery.

DOLE has committed one or more of the following Labor Code violations against Mr. Aguilera, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

DOLE’s Company-Wide and Uniform Payroll and HR Practices

DOLE PACKAGED FOODS, LLC is a California limited liability company. Upon information and belief, DOLE is a packaged food supplier offering a wide range of packaged fruit products such as fruit juices, frozen fruit, and packed shelf stable fruit, and operates five (5) production facilities in California. Upon information and belief, DOLE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Westlake Village, California, for all non-exempt, hourly paid employees working for DOLE in California, including Mr. Aguilera and other aggrieved employees. At all relevant times, DOLE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Aguilera and other aggrieved employees, regardless of their location or position.

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

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

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

DOLE willfully failed to pay all overtime wages owed to Mr. Aguilera and other aggrieved employees. During the relevant time period, Mr. Aguilera and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

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

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, DOLE had, and continues to have, a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour. DOLE's rounding policy resulted in the failure to compensate Mr. Aguilera and other aggrieved employees fully for all hours worked, causing Mr. Aguilera and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. DOLE's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Aguilera and other aggrieved employees. To the extent DOLE's rounding policy has taken away time worked that was eligible for overtime, Mr. Aguilera and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant time period, DOLE had a company-wide policy and/or practice of discouraging and impeding Mr. Aguilera and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with DOLE's understaffing policy and assignment of heavy workloads, led Mr. Aguilera and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. For example, DOLE required Mr. Aguilera to start preparing the juice concentrate machine about 30 minutes before he was permitted to clock in at his scheduled shift start-time, approximately three (3) times per month. Additionally, DOLE's supervisors required that Mr. Aguilera continue performing work duties after he clocked out, such as washing and cleaning machinery and/or assisting other departments, about once per month, so the entire DOLE production facility would be able to meet production demands. DOLE failed to track this time spent working before and after scheduled shifts, and Mr. Aguilera and other aggrieved employees received no compensation for this time.

Third, as stated, DOLE had, and continues to have, a uniform practice and/or policy of understaffing its locations strictly based on the labor hours or labor budget set by the corporate office. DOLE's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workloads and provide meal period coverage. Also, DOLE has systematically, and on a company-wide basis, understaffed its locations by adopting a single-staffing model for some of its positions, pursuant to its labor budget practices, thereby failing to provide adequate meal period coverage to permit those employees to take compliant meal periods. Moreover, DOLE had a practice of failing to schedule meal periods, which further caused Mr. Aguilera and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, DOLE's management instituted a policy requiring that machine operators monitor and make running adjustments and/or repairs to machinery at all times, including during unpaid meal periods. At the same time, DOLE adhered to a single-staffing model for the machine operator position pursuant to its labor budget, which exacerbated the lack of meal period coverage. As a result, Mr. Aguilera was forced to forego meal periods once per week in order to complete the tasks and duties DOLE assigned to him. In addition, Mr. Aguilera would have his meal periods interrupted and cut short twice per month when machinery required adjustments and/or repairs. Consequently, Mr. Aguilera and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned workloads.

Additionally, due to the lack of meal period coverage and policy requiring that machine operators monitor and make running adjustments and/or repairs to machinery at all times, DOLE required Mr. Aguilera and other aggrieved employees to remain on or near the work premises for their meal periods. Because Mr. Aguilera and other aggrieved employees were restricted from leaving the work premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, Mr. Aguilera and other aggrieved employees were unable to run personal errands or pick up food at restaurants because they were unable to leave the work premises. Thus, DOLE effectively maintained control over Mr. Aguilera and other aggrieved employees during meal periods.

Fourth, DOLE pressured Mr. Aguilera and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that DOLE would otherwise owe. For example, Mr. Aguilera was pressured by DOLE’s management to clock out and record compliant meal periods on shifts when he had not, in fact, received a compliant meal period. Thus, Mr. Aguilera and other aggrieved employees performed work during meal periods and received no compensation for this time.

DOLE knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Aguilera and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Aguilera and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, much of this off-the-clock work qualified for overtime premium pay.

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

DOLE’s failure to pay Mr. Aguilera and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Aguilera and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

As set forth above, during the relevant time period, due to DOLE's policy of rounding Mr. Aguilera's and other aggrieved employees' clock-in and clock-out times to the quarter-hour in its timekeeping system, DOLE failed to compensate Mr. Aguilera and other aggrieved employees fully for all hours worked.

As also set forth above, during the relevant time period, as a result of DOLE's policy of limiting the amount of overtime employees could accrue, coupled with the practice of utilizing labor budgets, resultant single-staffing and/or understaffing, assignment of heavy workloads, failure to schedule meal periods, requiring employees to stay on or near the work premises during meal periods and subsequent lack of meal period coverage, Mr. Aguilera and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock before and after their scheduled shifts. Additionally, as stated, in order to prevent employees from accruing meal period penalties, DOLE's management pressured employees to clock out for meal periods to reflect compliant meal periods, but required them to continue working. Thus, DOLE systematically failed to pay Mr. Aguilera and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, DOLE did not pay minimum wages for all hours worked by Mr. Aguilera and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, DOLE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, DOLE regularly failed to pay at least minimum wages to Mr. Aguilera and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Aguilera and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

As stated, DOLE had, and continues to have, company-wide policies and/or practices of single-staffing and understaffing its locations pursuant to its labor budget practices while assigning heavy

workloads, and failing to schedule meal periods, resulting in a failure to provide Mr. Aguilera and other aggrieved employees with adequate meal period coverage and prevented Mr. Aguilera and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. For example, Mr. Aguilera was required to take his meal periods late after having worked in excess of five (5) hours or more into his shift approximately twice per week, in order to monitor, make adjustments to, and/or repair machinery.

Furthermore, as stated above, in conjunction with these policies and/or practices, DOLE required Mr. Aguilera and other aggrieved employees to remain on or near the work premises for their meal periods. Because Mr. Aguilera and other aggrieved employees were restricted from leaving the work premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, DOLE effectively maintained control over Mr. Aguilera and other aggrieved employees during meal periods. Consequently, Mr. Aguilera and other aggrieved employees suffered interrupted meal periods and/or missed meal periods. Additionally, as stated, DOLE's management pressured Mr. Aguilera and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by DOLE.

Moreover, DOLE did not provide Mr. Aguilera and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Aguilera was never provided a second meal period even though he regularly worked shifts of ten (10) hours or more. Mr. Aguilera and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, DOLE knew or should have known that as a result of its policies, Mr. Aguilera and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. DOLE further knew or should have known that it did not pay Mr. Aguilera and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

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

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

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

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

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

During the relevant time period, DOLE regularly failed to authorize and permit Mr. Aguilera and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, DOLE's policies and/or practices of understaffing and assigning heavy workloads prevented Mr. Aguilera and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. DOLE also failed to schedule rest periods, which, coupled with DOLE's failure to provide adequate rest period coverage, further led to Mr. Aguilera and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, DOLE maintained and implemented a company-wide practice and/or policy requiring that Mr. Aguilera and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Aguilera and other aggrieved employees were restricted from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, DOLE effectively maintained control over Mr. Aguilera and other aggrieved employees during rest periods, and, as a result of this rest period policy, DOLE did not relinquish control over Mr. Aguilera and other aggrieved employees during rest periods.

As a result of DOLE's practices and policies, Mr. Aguilera and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Aguilera would miss his rest periods at least once per week or had his rest periods interrupted or cut short twice per month in order to complete all of the work-related duties DOLE assigned to him.

DOLE also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Mr. Aguilera and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that DOLE did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, DOLE did not pay other aggrieved employees at the correct rate of pay for premiums because DOLE failed to include all

forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. DOLE has not provided Mr. Aguilera and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

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

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

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

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

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, DOLE engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Aguilera and other aggrieved employees in violation of section 1198. Also, as stated, DOLE engaged in a company-wide practice and/or policy of falsifying Mr. Aguilera’s and other aggrieved employees’ time records by pressuring Mr. Aguilera and other aggrieved employees record that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Aguilera and other aggrieved employees. Furthermore, in light of DOLE’s failure to provide Mr. Aguilera and other aggrieved employees with second 30-minute meal periods to which they were entitled, DOLE kept no records of meal start and end times for second meal periods.

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

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

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

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

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

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

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

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

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

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant time period, on information and belief, DOLE scheduled other aggrieved employees to work eight (8) or more hours per day and more than seven (7) consecutive days in a workweek. Because other aggrieved employees worked over thirty (30) hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, DOLE caused other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, DOLE, on a company-wide basis, forced Mr. Aguilera and other aggrieved employees to purchase their own supplies and tools. For example, Mr. Aguilera was required to spend approximately \$40.00 on a flashlight, \$20.00 on pliers, and \$30.00 on a wrench in order to carry out his work-related duties. Although DOLE required Mr. Aguilera and other aggrieved employees to purchase their own supplies and tools for use on the job, DOLE did not reimburse them for these expenses.

DOLE could have provided Mr. Aguilera and other aggrieved employees with the actual tools for use on the job, such as supplies and tools to be used for fulfilling work-related tasks, or could have reimbursed employees for the costs of their supply and tools expenses. Instead, DOLE passed these operating costs off onto Mr. Aguilera and other aggrieved employees. At all relevant times, Mr. Aguilera did not earn at least two (2) times the minimum wage.

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

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

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act

provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

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

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

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." DOLE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Aguilera's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Aguilera seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Aguilera, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against DOLE for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', with a stylized flourish extending to the right.

Alexander Lima

Copy: DOLE PACKAGED FOODS, LLC (via U.S. Certified Mail)



7020 1290 0001 8879 0251

one
LAW APC
ry Park East, Ste 1000
s, CA 90067

DOLE PACKAGED FOODS, LLC
3059 TOWNSGATE ROAD, SUITE 400
WESTLAKE VILLAGE, CA 91361



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:
DOLE PACKAGED FOODS, LLC
3059 TOWNSGATE ROAD, SUITE 400
WESTLAKE VILLAGE, CA 91361

2. Article Number (Transfer from service label)
7020 1290 0001 8879 0251

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature	☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery	☐ Registered Mail™
☒ Certified Mail®	☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery	☐ Return Receipt for Merchandise
☐ Collect on Delivery	☐ Signature Confirmation™
☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery
☐ Insured Mail	
☐ Insured Mail Restricted Delivery (over \$500)	

Domestic Return Receipt

7020 1290 0001 8879 0251

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

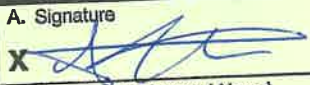
☒ Return Receipt (hardcopy)	\$ 2.80
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$

Postage
\$ 1.63

Total Postage and Fees
\$ 7.93

Postmark
Here
Aguilera v. Dole
Packaged Foods, LLC

Sent To
DOLE PACKAGED FOODS, LLC
Street and Apt. No., 3059 TOWNSGATE ROAD, SUITE 400
City, State, ZIP+4® WESTLAKE VILLAGE, CA 91361

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete Items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ Agent ☐ Addressee X 	
1. Article Addressed to: DOLE PACKAGED FOODS, LLC 3059 TOWNSGATE ROAD, SUITE 400 WESTLAKE VILLAGE, CA 91361		B. Received by (Printed Name) <u>Willmar Perez</u>	C. Date of Delivery <u>3/18/21</u>
 9590 9402 1512 5362 2711 17		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
2. Article Number (Transfer from service label) 7020 1290 0001 8879 0251		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500)	
		☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	
PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt	

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On May 24, 2021, I served the within document(s) described below as:

FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION

on the interested parties in this action as follows:

C T Corporation System
818 West 7th Street, Suite 930
Los Angeles CA 90017
Agent for Service of Process for
Defendant Dole Packaged Foods, LLC

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

EXECUTED this document on May 24, 2021, at Los Angeles, California.



Sandy S. Acevedo