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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF RIVERSIDE**

11 RODOLFO VEGA, as an individual, on behalf
of himself and all persons similarly situated,

12 Plaintiff,

13 v.

14 FONDOMONTE CALIFORNIA, LLC, a
15 Delaware limited liability company authorized
to do business in the state of California; and
16 DOES 1 through 50 inclusive,

17 Defendants.
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Case No.: CVRI2102283

**FIRST AMENDED CLASS ACTION [Cal.
Code Civ. Proc. § 382] and REPRESENTATIVE
ACTION [Labor Code §§ 2698, et seq.]
COMPLAINT**

1. Failure to Provide Meal Periods;
2. Failure to Provide Rest Periods;
3. Failure to Provide Recovery Periods;
4. Failure to Pay All Minimum and Regular Wages;
5. Failure to Pay All Overtime Wages;
6. Failure to Indemnify Necessary Business Expenditures;
7. Failure to Maintain Accurate Records;
8. Failure to Provide Accurate Itemized Wage Statements;
9. Failure to Timely Pay All Wages Due Upon Separation of Employment;
10. Failure to Provide Employment Records;
11. Violation of Business & Professions Code §§ 17200, et seq.; and
12. Violation of the Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.

- JURY TRIAL DEMANDED -

1 RODOLFO VEGA, individually and on behalf of all other similarly situated and/or aggrieved
2 employees of Defendants FONDOMONTE CALIFORNIA, LLC and DOES 1 through 50, inclusive,
3 alleges as follows:

4 **I.**

5 **INTRODUCTION**

6 1. Plaintiff RODOLFO VEGA (“Plaintiff”) brings this individual, putative class action, and
7 representative against Defendants FONDOMONTE CALIFORNIA, LLC and DOES 1 through 50,
8 inclusive (“Defendants”), for engaging in a pattern of wage and hour violations under the California Labor
9 Code and the Industrial Welfare Commission (“IWC”) Wage Orders.

10 2. Plaintiff brings this action on behalf of all current and former employees who were
11 employed by Defendants in the State of California and who worked in any non-exempt position during
12 the applicable relevant time period (hereinafter “similarly situated employees”).

13 3. Plaintiff also brings this representative action pursuant to the Private Attorneys General
14 Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) against Defendants for engaging in a
15 pattern of wage and hour violations under the California Labor Code and the applicable IWC Wage Order.
16 Plaintiff brings this action under PAGA on behalf of all other current and former non-exempt employees
17 of Defendants in the State of California who have suffered at least one of the Labor Code violations
18 described herein during the applicable relevant time period (hereinafter “aggrieved employees”).

19 4. Plaintiff is informed and believes, and on that basis alleges, that Defendants decreased their
20 employment-related costs by systematically violating California wage and hour laws and engaging in
21 unlawful and unfair business practices.

22 5. Defendants’ systemic pattern of Labor Code and IWC Wage Order violations toward
23 Plaintiff and other similarly situated employees in California includes, but is not limited to:

- 24 a. Failure to provide off-duty meal periods of at least thirty minutes before the
25 commencement of the sixth hour of work;
- 26 b. Failure to authorize and permit off-duty paid rest periods;
- 27 c. Failure to authorize and permit compliant recovery periods;
- 28 d. Failure to pay all minimum and regular wages for all hours worked;

- e. Failure to pay all overtime wages;
- f. Failure to indemnify employees for necessary business expenses;
- g. Failure to maintain accurate records;
- h. Failure to provide accurate itemized wage statements;
- i. Failure to timely pay all wages due upon separation of employment; and
- j. Failure to provide employment records upon request.

6. Plaintiff brings this lawsuit against Defendants seeking damages, restitution, declaratory judgment, injunctive relief, statutory and civil penalties, and monetary relief on behalf of himself and all other similarly situated and/or aggrieved employees of Defendants in California. Plaintiff seeks to recover, inter alia, unpaid wages, unreimbursed expenses, interest, attorney's fees, damages, liquidated damages, statutory and civil penalties, and costs pursuant to Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.7, 246, 248.5, 432, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2698, *et seq.*, 2802, California Business and Professions Code section 17200, *et seq.*, and the provisions of the applicable IWC Wage Order.

7. Plaintiff reserves the right to name additional representatives.

II.

PARTIES

A. Plaintiff

8. Plaintiff was employed by Defendants from approximately June 4, 2020 to December 12, 2020 as a concrete laborer in Defendants' irrigation department at its farm in Blythe, California.

9. Plaintiff is a resident of Ehrenberg, Arizona, but was employed in Blythe, California in Riverside County.

10. At all relevant times, Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees of Defendants in California were subject to the same policies, practices, and procedures governing their employment, the payment of wages, and hours worked.

B. Defendants

11. Defendant Fondomonte California, LLC is a Delaware limited liability company which owns several thousands of acres of farmland in and near Blythe, California, where it grows hay and alfalfa

1 for livestock owned by its parent company, Almarai Co., in Saudi Arabia. Defendant also owns several
2 thousands of acres of land in Arizona, and several hundreds of acres of land in the Imperial Valley in
3 California.

4 12. Defendants' wrongful conduct, as alleged herein, occurred in the County of Riverside and
5 in the State of California.

6 13. Plaintiff is informed and believes, and thereon alleges, that each Defendant, whether named
7 or fictitious, is and at all relevant times was authorized to do business and did business in the State of
8 California and was Plaintiff's and other similarly situated and/or aggrieved employees' "employer" as
9 defined in and subject to the California Labor Code and the applicable IWC Wage Order.

10 14. Each of the fictitiously named Defendants participated in the acts alleged in this Complaint.
11 The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently
12 unknown to Plaintiff. Plaintiff will amend this Complaint, setting forth the true names and capacities of
13 the fictitious defendants, if and when their true names and capacities are ascertained. Plaintiff is informed
14 and believes, and on that basis alleges, that each of the fictitious Defendants participated in the acts alleged
15 in this Complaint.

16 15. Plaintiff and all other similarly situated and/or aggrieved employees are, and at all relevant
17 times were, employees of each Defendant, including DOES 1 through 50, within the meanings set forth
18 in the California Labor Code and applicable IWC Wage Order.

19 16. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named
20 or fictitious, was the agent, employee or other person acting on behalf of every other Defendant, and, in
21 participating in the acts alleged in this Complaint, acted within the scope of such agency or employment
22 and ratified the acts of each other Defendant.

23 17. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named
24 or fictitious, exercised control over Plaintiff's and other similarly situated and/or aggrieved employees'
25 wages, hours and/or working conditions.

26 18. Plaintiff is further informed and believes that at all relevant times, each Defendant, whether
27 named or fictitious, acted as the agent for the other Defendants, carried out a joint scheme, business plan
28 or policy, and the acts of each Defendant are legally attributable to the other Defendants.

19. Each Defendant, whether named or fictitious, was the alter ego of each of the other Defendants at all relevant times herein.

20. A unity of interest and ownership between each Defendant, whether named or fictitious, exists such that all Defendants acted as a single employer of Plaintiff and all other similarly situated and/or aggrieved employees.

21. Defendants, including DOES 1 through 50, were Plaintiff's employers or persons acting on behalf of Plaintiff's employer, within the meaning of California Labor Code section 558.1 and, as such, are liable as the employer for violations of Labor Code sections 203, 226, 226.7, 1193.6, 1194, or 2802, at all relevant times.

22. Defendants, including DOES 1 through 50, were Plaintiff's employers or persons acting on behalf of Plaintiff's employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code sections 558 and 1197.1, and as such, are subject to civil penalties for each underpaid employee.

III.

JURISDICTION AND VENUE

23. This Court has subject matter jurisdiction to hear this case because Plaintiff is informed and believes that the monetary damages and restitution sought herein for Defendants' conduct exceeds the minimum jurisdictional limits of the Superior Court.

24. Venue is proper in Riverside County pursuant to Code of Civil Procedure sections 395(1) and 395.5 because Defendants maintain farmland and transact substantial business in Riverside County, Defendants employed Plaintiff and other similarly situated employees in Riverside County, and the unlawful acts alleged herein, which arose in Riverside County, have a direct effect on Plaintiff and other similarly situated and/or aggrieved employees within Riverside County.

IV.

GENERAL ALLEGATIONS

25. Plaintiff is a former employee of Defendants who worked as a non-exempt employee at Defendants' farm properties in Blythe, California from approximately June 4, 2020 to December 12, 2020.

26. Defendant Fondomonte California, LLC, is a subsidiary of the Saudi Arabian company

1 Almarai Co., one of the world's largest dairy companies. Defendant Fondomonte California, LLC, owns
2 several thousand acres of farmland in and near Blythe, California where it grows hay and alfalfa for
3 livestock at Almarai Co.'s dairy farms in Saudi Arabia. Defendant Fondomonte California, LLC also owns
4 several thousand acres of land in Arizona, and several hundred acres of land in the Imperial Valley in
5 California.

6 27. At all relevant times, Plaintiff was classified as a non-exempt employee and was
7 compensated on an hourly basis. Plaintiff typically worked shifts of ten (10) hours or more, up to six (6)
8 days per week. Plaintiff frequently worked overtime hours and was entitled to overtime pay.

9 28. Defendants' property in Blythe, California, is located directly next to the Colorado River.
10 The river water is diverted and dispersed throughout Defendants' property through a series of concrete
11 canals and irrigation ditches. Plaintiff's job duties included performing minor concrete maintenance work
12 on the canals and irrigation ditches which run throughout Defendants' property. These were typically
13 small concrete jobs, involving minor patchwork which required no more than one to two sacks of concrete
14 mix.

15 29. Plaintiff's duties were not limited solely to concrete work. For example, Plaintiff's other
16 duties included using a backhoe to maintain dirt slopes which surrounded Defendants' crop fields,
17 installing irrigations gates, installing drain pipes, installing check valves, cleaning irrigation ditches,
18 maintaining weeds around the borders of the crop fields, painting, and transporting fertilizer and pesticide
19 containers.

20 30. At no time during Plaintiff's employment was he primarily engaged in administrative
21 duties, and the majority of the work he performed was non-managerial in nature. Furthermore, Plaintiff
22 was not primarily engaged in work directly related to management policies or the general business
23 operations of Defendants. Plaintiff was not permitted to exercise discretion or independent judgment and
24 could not hire or fire employees. At all times, Plaintiff was a non-exempt employee and should have
25 received the protections afforded by the California Labor Code and the applicable IWC Wage Order.

26 31. Defendants denied Plaintiff and, on information and belief, other similarly situated and/or
27 aggrieved employees, certain rights afforded to them under the California Labor Code and the IWC Wage
28 Order. Specifically, Defendants did not properly compensate Plaintiff and other similarly situated and/or

1 aggrieved employees for all hours worked, failed to provide compliant meal and rest periods, failed to
2 maintain accurate records, failed to provide accurate itemized wage statements, failed to reimburse for all
3 necessary expenses, and failed to pay all wages due and owing by the times set forth by law.

4 32. Although Plaintiff and, on information and belief, other similarly situated and/or aggrieved
5 employees signed an On Duty Meal Agreement, the On Duty Meal Agreement is invalid and/or illegal,
6 and did not result in properly waived meal periods because their daily tasks did not make it virtually
7 impossible to take off-duty meal periods.

8 33. Defendants had a pattern and practice of not providing Plaintiff and, on information and
9 belief, other similarly situated and/or aggrieved employees with legally compliant meal periods, even
10 though Plaintiff and other similarly situated and/or aggrieved employees worked more than six (6) hours
11 during their workday.

12 34. Pursuant to Defendants' policies, practices, and procedures, Plaintiff and, on information
13 and belief, other similarly situated and/or aggrieved employees of Defendants were regularly required to
14 take on-duty meal periods, late meal periods after the end of their fifth hour, or did not take meal periods
15 at all. In addition, Plaintiff and, on information and belief, other similarly situated and/or aggrieved
16 employees were frequently interrupted during their meal periods to service customers. For example,
17 Plaintiff's supervisors would not allow Plaintiff to take his meal breaks at an appropriate time prior to
18 preparing a concrete mix. Instead, Plaintiff was required to work through the time he should take his meal
19 break, and have to take a late meal break at some other time, or not at all. Plaintiff's supervisors would
20 regularly tell him not to take a timely meal break and to continue working. Plaintiff's on-duty meal periods
21 were not required due to the nature of the work, but were required for the convenience of Defendants. As
22 a result of Defendants' illegal policies, Plaintiff and, on information and belief, other similarly situated
23 and/or aggrieved employees were denied the opportunity to take legally compliant 30-minute meal
24 periods, in violation of the applicable Wage Order.

25 35. Additionally, on the occasions when Plaintiff did take a meal break, he was typically
26 situated out among Defendants' property and not anywhere near the central office or break room at the
27 time he typically took a meal break. When Plaintiff was on Defendants' property, he drove a company-
28 owned vehicle around the property, and he was ordered not to drive the vehicle back to the break room or

1 drive the vehicle off the premises during his meal period. Plaintiff therefore was required to take his break
2 wherever he was placed among Defendants' property and to monitor the company-owned vehicle, and
3 could not leave the premises or use a suitable break area.

4 36. Furthermore, Plaintiff and, on information and belief, other similarly situated and/or
5 aggrieved employees were instructed by Defendants to manually amend their time card to record a meal
6 break regardless of whether they were able to take one.

7 37. Thus, as a result of Defendants' illegal policies, Plaintiff and, on information and belief,
8 other similarly situated and/or aggrieved employees were denied the opportunity to take legally compliant
9 meal periods, in violation of the applicable Wage Order.

10 38. Defendants similarly had a pattern and practice of failing to authorize and permit Plaintiff
11 and, on information and belief, other similarly situated and/or aggrieved employees to take legally
12 compliant rest periods of at least 10-minutes for every four-hour work period, or major fraction thereof.
13 Because Defendants required Plaintiff and other similarly situated and/or aggrieved employees to remain
14 on duty at all times, Plaintiff and other similarly situated and/or aggrieved employees were precluded from
15 taking any rest breaks. Thus, as a result of Defendants' illegal policies, Plaintiff and, on information and
16 belief, other similarly situated and/or aggrieved employees were not authorized or permitted to take legally
17 compliant rest periods, in violation of the applicable Wage Order.

18 39. Defendants failed to provide Plaintiff and, on information and belief, other similarly
19 situated and/or aggrieved employees with compliant recovery periods, because Defendants did not provide
20 them with off-duty access to shade when the outdoor temperature at the worksite exceeded 80 degrees
21 Fahrenheit. Although Defendants had a written policy addressing Recovery Periods, Defendants had a
22 pattern and practice of not providing Plaintiff and, on information and belief, other similarly situated
23 and/or aggrieved employees with the opportunity to take a legally compliant recovery period. Plaintiff and
24 other similarly situated and/or aggrieved employees were not provided with tents, canopies, or any other
25 source of shade, nor was there natural shade available throughout the property. On several occasions,
26 Defendants' water supply was either contaminated or depleted, and on one particular occasion Plaintiff
27 was dropped off at a remote area of the property and left there for approximately three hours under high
28 heat conditions without being provided any water. Although Defendants failed to provide Plaintiff and,

1 on information and belief, other similarly situated and/or aggrieved employees with compliant recovery
2 periods, Defendants never paid Plaintiff and, on information and belief, other similarly situated and/or
3 aggrieved employees an additional hour of pay.

4 40. Although Plaintiff's and, on information and belief, other similarly situated and/or
5 aggrieved employees' meal periods, rest periods, and recovery periods were regularly missed, late, short,
6 or on-duty, Defendants did not compensate Plaintiff and, on information and belief, other similarly
7 situated and/or aggrieved employees an additional hour of pay at their regular rate of pay for the times
8 that Plaintiff and other similarly situated and/or aggrieved employees were not authorized or permitted to
9 take a compliant and timely meal or rest period, in violation of Labor Code section 226.7. On information
10 and belief, Defendants never paid Plaintiff or any other non-exempt employee a meal or rest premium
11 wage pursuant to Labor Code section 226.7.

12 41. Defendants failed to properly pay Plaintiff and, on information and belief, other similarly
13 situated and/or aggrieved employees at least minimum, regular, and overtime wages owed for all time
14 suffered or permitted to work, in violation of the Labor Code, because Defendants required Plaintiff and,
15 on information and belief, other similarly situated and/or aggrieved employees to complete pre-shift and
16 post-shift work while off-the-clock because Defendants improperly considered the pre-shift and post-shift
17 work Plaintiff and other similarly situated and/or aggrieved employees completed as non-compensable
18 time. For example, Plaintiff would have to pass by a security booth prior to clocking in where he would
19 have to stop and undergo a health screening prior to entering Defendants' main office building. The guard
20 at the security booth would also provide Plaintiff with the keys to the company-owned vehicle Plaintiff
21 would use to complete his duties that day. At the end of the day after clocking out, Plaintiff would then
22 have to return the keys to the security booth. At no time were Plaintiff or other similarly situated and/or
23 aggrieved employees compensated for this time.

24 42. Plaintiff and, on information and belief, other similarly situated and/or aggrieved
25 employees were also not paid all minimum, regular, and overtime wages rightfully owed because Plaintiff
26 and other similarly situated and/or aggrieved employees were required to work through meal periods, even
27 though employees were required to note that a thirty-minute meal period had been taken. Even though
28 Plaintiff signed an On Duty Meal Agreement, he performed several tasks which did not require him to

1 remain on duty during his meal periods, but he was still required to do so regardless of the tasks he was
2 performing.

3 43. Plaintiff and, on information and belief, other similarly situated and/or aggrieved
4 employees of Defendants incurred expenses in direct consequence of the discharge of their duties of
5 employment with Defendants, but Defendants failed to adequately reimburse employees for such
6 expenses. For example, the vehicle which Plaintiff frequently operated was equipped with a two-way radio
7 so that he could communicate with supervisors and other personnel who were located elsewhere on
8 Defendants' property. The radio, however, was broken, and although Plaintiff brought this to Defendants'
9 attention, the radio was never repaired or replaced. As a result, Plaintiff was required to use his personal
10 cell phone instead of the vehicle's radio system. Plaintiff never received any reimbursement for these
11 expenses.

12 44. As a direct consequence of Defendants' illegal policies, Defendants did not keep accurate
13 records of the actual hours that Plaintiff and, on information and belief, other similarly situated and/or
14 aggrieved employees were under the control of Defendants, as well as all wages earned. Further,
15 Defendants had the practice of requiring Plaintiff and similarly situated and/or aggrieved employees to
16 manually write in the times they took a meal period or a rest period, but required Plaintiff and other
17 similarly situated and/or aggrieved employees to write in times which reflected a compliant break period
18 regardless of whether a compliant break was actually taken. As a result, Defendants failed to keep accurate
19 records of Plaintiff's and other similarly situated and/or aggrieved employees' hours worked when
20 Defendants failed to record the proper beginning and ending of each work day and meal period, in addition
21 to the total hours worked during the pay period, among others.

22 45. Defendants similarly failed to provide Plaintiff and, upon information and belief, other
23 similarly situated and/or aggrieved employees with accurate itemized wage statements. For example,
24 during the applicable statutory period, Defendants failed to furnish Plaintiff and, on information and belief,
25 other similarly situated and/or aggrieved employees with itemized wage statements that included the total
26 regular and overtime hours worked during the pay period, and the correct amount of gross and net wages
27 earned.

28 46. To date, Defendants have not paid Plaintiff and, on information and belief, other similarly

1 situated and/or aggrieved employees all wages owed, including all minimum, regular, and overtime wages,
2 as well as all meal and rest period premium wages.

3 47. Defendants maintained a pattern and practice of failing to pay Plaintiff and other similarly
4 situated and/or aggrieved employees all wages due and owing at the time of their separation of
5 employment within the time specified by Labor Code sections 201 and 202 because Defendants failed to
6 pay Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees all wages
7 due and owing at the time of termination of their employment.

8 48. Plaintiff is informed and believes that Defendants maintained a pattern and practice of
9 failing to pay Plaintiff and other similarly situated and/or aggrieved employees all wages due and owing
10 during their employment within the time specified by Labor Code section 204 because Defendants failed
11 to pay Plaintiff and other similarly situated and/or aggrieved employees all minimum, regular, and
12 overtime wages earned for all the time they were suffered or permitted to work, engaged in work and/or
13 were under Defendants' control, as well as all meal and rest premium wages.

14 49. Plaintiff alleges that Defendants have a policy, practice, procedure, guideline and/or culture
15 of failing to provide him and other employees with a copy of their employment and personnel records
16 upon request in the time frame prescribed by California law. For instance, Plaintiff sent a written request
17 to Defendants to obtain and/or inspect his personnel file and employment records following his
18 termination, and did not receive a response within thirty days of his request. Accordingly, Defendants
19 have violated Labor Code sections 226(b) and (c) and Labor Code section 1198.5.

20 50. Based on the foregoing violations of the Labor Code and the applicable IWC Wage Order,
21 Defendants engaged in unfair business practices in California and willingly and knowingly engaged in an
22 employment pattern and practice that violated Business & Professions Code section 17200, *et seq.* Plaintiff
23 and, on information and belief, other similarly situated and/or aggrieved employees suffered damages due
24 to Defendants' unfair, unlawful and/or fraudulent actions.

25 **V.**

26 **CLASS ACTION DESIGNATION**

27 51. Plaintiff re-alleges and incorporates by reference the allegations contained in the
28 paragraphs above as though fully set forth herein.

52. Plaintiff brings Causes of Action One through Eleven as a Class Action pursuant to California Code of Civil Procedure section 382 on behalf of himself and all current and former non-exempt employees of Defendants in California who were affected by Defendants' Labor Code violations, Business and Professions Code violations, and IWC Wage Order violations, as alleged herein.

53. Plaintiff seeks to represent the following Class, defined as:

Non-Exempt Class:

"All current and former non-exempt employees who worked for Defendants in the State of California at any time during the period commencing on the date that is four (4) years prior to the filing of the Complaint through the present."

54. Plaintiff also seeks to represent the following Subclasses, defined as:

Meal Period Subclass:

"All members of the Non-Exempt Class who signed an on-duty meal period agreement."

Rest and Recovery Period Subclass:

"All members of the Non-Exempt Class who performed any employment-related tasks outdoors or in an open-air environment area."

Waiting Time Penalty Subclass:

"All members of the Non-Exempt Class whose employment with Defendants ended at any time during the period commencing on the date that is within three (3) years prior to the filing of the Complaint through the present."

55. **Reservation of Rights:** Pursuant to California Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into subclasses, and/or limitation to particular issues.

56. Causes of Action One through Eleven are appropriately suited for a class action pursuant to section 382 of the California Code of Civil Procedure because the following requirements are met:

A. Numerosity

57. The members of the Class and Subclasses are sufficiently numerous to render the joinder of all their members impracticable. While Plaintiff has not yet determined the precise number of members of the Class and Subclasses, Plaintiff is informed and believes that the Class and Subclasses likely consist

1 of over 30 individuals. Although the exact number is currently unknown to Plaintiff, this information is
2 easily ascertainable from Defendants' time and payroll records and other personnel records.

3 **B. Commonality**

4 58. Common questions of law and fact exist as to all putative class members and predominate
5 over any questions affecting only individual members of the Class or Subclasses. The common questions
6 of law and fact that predominate include, but are not limited to:

- 7 a. Whether members of the Meal Period Subclass signed a valid on-duty meal period
8 agreement;
- 9 b. Whether Defendants failed to provide members of the Meal Period Subclass with
10 off-duty, thirty-minute meal periods before the commencement of the sixth hour of
11 work;
- 12 c. Whether Defendants failed to permit Rest Period Subclass members to take off-
13 duty rest periods of at least ten minutes for every four hours worked, or major
14 fraction thereof, by requiring them to stay on duty during their Rest Periods;
- 15 d. Whether Defendants had a policy properly informing Rest Period Subclass
16 members that they are not required to perform work-related duties during a Rest
17 Period;
- 18 e. Whether Defendants failed to authorize and permit members of the Recovery
19 Period Subclass to take recovery periods;
- 20 f. Whether Defendants failed to provide members of the Recovery Period Subclass
21 with sufficient access to potable drinking water;
- 22 g. Whether Defendants failed to pay one additional hour of pay at the employees'
23 regular rate of compensation to Meal Period Subclass members, Rest Period
24 Subclass members, and Recovery Period Subclass Members when they were not
25 provided with compliant and timely meal periods, rest periods, or recovery periods;
- 26 h. Whether Defendants failed to pay Non-Exempt Class members at least minimum
27 wages and/or all regular wages owed for all hours or fractions of an hour worked
28 and under the control of Defendants;

- i. Whether Defendants failed to pay Non-Exempt Class members all overtime wages for all hours, or fraction of hours, worked and under the control of Defendants;
- j. Whether Defendants failed to indemnify Non-Exempt Class members for necessary business expenses incurred in direct consequence of the discharge of their duties;
- k. Whether Defendants failed to properly and accurately record and maintain records of all hours worked and wages earned by Non-Exempt Class members;
- l. Whether Defendants failed to provide Non-Exempt Class members with accurate itemized wage statements showing, among other things, the number of hours worked and the correct amount of gross and net wages earned; and
- m. Whether Defendants failed to pay Waiting Time Penalties Subclass members all of their wages owed within the required time frames upon separation of employment.

C. Typicality

59. Plaintiff's claims are typical of the claims of all putative class members because Plaintiff's and all putative class members' claims arise from the same events, practices and/or courses of conduct of Defendants. Plaintiff and all putative class members sustained injuries and damages as a result of Defendants' illegal policies, practices and/or common courses of conduct in violation of California wage and hour laws and/or illegal, unfair, or fraudulent business practices.

60. Furthermore, Plaintiff's claims under the Labor Code and the applicable IWC Wage Order are typical of the Class and Subclasses because Defendants' failure to comply with the provisions of California's wage and hour laws entitles Plaintiff and each putative class member to similar pay, benefits, and other relief. Accordingly, the legal theories underlying each cause of action are the same and the remedies sought by Plaintiff and all putative class members are the same.

D. Adequacy of Representation

61. Plaintiff has no fundamental conflict of interest with the Class or Subclasses he seeks to represent. Plaintiff will adequately protect the interests of all putative class members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to him and the putative class members.

62. Plaintiff retained attorneys who are experienced employment law litigators with significant

wage and hour and class action experience.

E. Superiority of Class Action

63. Plaintiff believes a class action is a superior method of litigation for the fair and efficient adjudication of this controversy. Individual joinder of all putative class members is not practicable. Class action treatment will allow similarly situated employees to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

64. Plaintiff knows of no difficulty that might be encountered in the management of this suit, which would preclude maintenance as a class action.

VI.

THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”)

REPRESENTATIVE ACTION DESIGNATION

65. The causes of action alleged herein are appropriately suited for a PAGA representative action because:

- a. Pursuant to California Labor Code section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the California Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and all other current and/or former employees pursuant to the procedures specified in section 2699;
- b. This action involves allegations of violations of provisions of the California Labor Code that provide or do not provide for a civil penalty to be assessed and collected by the LWDA or any departments, divisions, commissions, boards, agencies, or employees;
- c. Plaintiff is an “aggrieved employee” because he was employed by the alleged violators and had one or more of the alleged violations committed against him;
- d. On March 4, 2021, Plaintiff satisfied the procedural requirements of section 2699.3 by serving the LWDA electronically and Defendant Fondomonte California, LLC,

1 through its agent for service of process and via certified mail, with his notice for
2 wage and hour violations and penalties, including the facts and theories to support
3 each violation. A true and correct copy of Plaintiff's notice and proof of service is
4 attached as **Exhibit 1**;

5 e. On March 22, 2021, Plaintiff satisfied the procedural requirements of section
6 2699.3 by serving the LWDA electronically and Defendant Fondomonte
7 California, LLC, through its agent for service of process and via certified mail, with
8 an amended notice including additional claims for wage and hour violations and
9 penalties, including the facts and theories to support each violation. A true and
10 correct copy of the amended notice and proof of service is attached as **Exhibit 2**;

11 f. More than 65 days have passed since Plaintiff served notice via certified mail to the
12 LWDA and to his former employer. Therefore, Plaintiff satisfied all the
13 administrative requirements to pursue civil penalties against Defendants pursuant
14 to Labor Code section 2698, *et seq.*;

15 g. Plaintiff files this action pursuant to Labor Code section 2699(a) and (f) on behalf
16 of himself and all other aggrieved employees of Defendants to recover civil
17 penalties; and

18 h. Plaintiff seeks to recover all applicable civil penalties under PAGA on behalf of
19 himself and all other aggrieved employees of Defendants in California.

20 **VII.**

21 **CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS**

24 **(Violation of Labor Code §§ 226.7, 512, 1198, and the "Meal Periods" Section of the Applicable**
25 **IWC Wage Order)**

26 **(Alleged by Plaintiff Individually and on behalf of the Meal Period Subclass Against all**
27 **Defendants)**

28 66. Plaintiff re-alleges and incorporates by reference the allegations contained in the

1 paragraphs above, as though fully set forth herein.

2 67. Labor Code section 512(a) provides, in part, that employers, including Defendants, “may
3 not employ an employee for a work period of more than five hours per day without providing an employee
4 with a meal period of not less than 30 minutes” and “may not employ an employee for a work period of
5 more than 10 hours per day without providing the employee with a second meal period of not less than 30
6 minutes.”

7 68. Labor Code section 226.7 requires that employers, including Defendants, provide their
8 employees with meal periods as mandated by the applicable Wage Order of the Industrial Welfare
9 Commission, and prohibits employers from requiring any employee “to work during any meal ... period
10 mandated by an applicable order of the Industrial Welfare Commission.” Labor Code section 226.7(c)
11 states, “[i]f an employer fails to provide an employee a meal ... period in accordance with a state law...
12 the employer shall pay the employee one additional hour of pay at the employee’s regular rate of
13 compensation for each workday that the meal ... period is not provided.”

14 69. Labor Code section 1198 states that the “maximum hours of work and standard conditions
15 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
16 labor for employees. The employment of any employee for longer hours than those fixed by the order or
17 under conditions of labor prohibited by the order is unlawful.”

18 70. The “Meal Periods” section of the applicable IWC Wage Order states:

19 [a]n employer may not employ an employee for a work period of more than
20 five (5) hours without providing the employee with a meal period of not less
21 than 30 minutes, except that when a work period of not more than six (6)
22 hours will complete the day’s work the meal period may be waived by
23 mutual consent of the employer and the employee.

24 It further provides that:

25 [a]n employer may not employ an employee for a work period of more than
26 ten (10) hours per day without providing the employee with a second meal
27 period of not less than 30 minutes, except that if the total hours worked is
28 no more than 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.

71. The “Meal Periods” section of the applicable IWC Wage Order also states:

[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties and on-the-job paid meal period is agreed to.

72. On information and belief, Plaintiff and the Meal Period Subclass were subject to the same policies, practices, and procedures governing the provision and scheduling of meals.

73. On information and belief, Defendants have a pattern and practice of not providing Plaintiff and the Meal Period Subclass with legally compliant 30-minute off-duty meal periods during their shifts, even though they worked more than six (6) hours during their workday.

74. Plaintiff and, on information and belief, the Meal Period Subclass were unable to take compliant meal periods as a result of Defendants’ policies alleged herein. For example, Defendants’ illegal policies required Plaintiff and, on information and belief, the Meal Period Subclass to remain on duty during their meal periods, to take late meal periods, or to miss meal periods altogether.

75. Thus, as a result of Defendants’ policies and practices, Plaintiff’s and Meal Period Subclass members’ meal periods were regularly on duty, late after the end of the fifth hour, short, or not taken.

76. Although Plaintiff and, on information and belief, members of the Meal Period Subclass signed on duty meal agreements, Plaintiff alleges that the on duty meal agreement is invalid and/or illegal, because Plaintiff and, on information and belief, members of the Meal Period Subclass were forced into entering the agreement even though the nature of their daily tasks did not prevent them from the ability to be relieved of all duty. Nonetheless, Defendants required Plaintiff and, on information and belief, members of the Meal Period Subclass to sign blanket waivers for off-duty meal periods at the commencement of and as a condition of their employment with Defendants. Thus, Plaintiff and, on information and belief, members of the Meal Period Subclass typically worked more than six (6) hours per day and did not properly waive any of their meal periods.

77. Therefore, as a result of Defendants’ conduct, including the conduct alleged herein, Defendants violated Labor Code sections 226.7, 512, and 1198, as well as the applicable IWC Wage Order when Defendants failed to provide Plaintiffs and the Meal Period Subclass members a thirty-minute, duty-free meal period before the commencement of their sixth hour of work.

78. Consequently, pursuant to Labor Code section 226.7(b), Defendants were required to pay Plaintiff and members of the Meal Period Subclass one additional hour of pay at their regular rate of compensation for each day that Defendants did not provide Plaintiff and the Meal Period Subclass with a thirty-minute, duty-free meal period before the commencement of their sixth hour of work.

79. Despite this obligation, Defendants did not pay Plaintiff and, on information and belief, the Meal Period Subclass one additional hour of pay at each employee's regular rate of compensation for each day that Defendants did not provide Plaintiff and the Meal Period Subclass with a thirty-minute, duty-free meal period before the commencement of their sixth hour of work.

80. Instead, on information and belief, Defendants have a common policy and practice of failing to compensate Plaintiff and the Meal Period Subclass with an hour of pay at their regular rate of pay for the times that Defendants did not provide Plaintiff and the Meal Period Subclass with a thirty-minute, duty-free meal period before the commencement of their sixth hour of work, as required by Labor Code section 226.7(b).

81. Thus, on information and belief, Defendants intentionally refused to perform their obligations to provide meal periods and further failed to compensate Plaintiff and the Meal Period Subclass with all owed meal premium wages as set forth by Labor Code section 226.7(b).

82. Plaintiff and the Meal Period Subclass suffered and continue to suffer losses related to Defendants' failure to pay an additional hour of pay for each day a legally compliant meal period was not provided and the associated use and enjoyment of compensation due and owing to them as a direct result of Defendants' Labor Code and IWC Wage Order violations.

83. Plaintiff seeks all available remedies for Defendants' violations, including, but not limited to, all wages due, monies, and interest to the extent permitted by law.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

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SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Violation of Labor Code §§ 226.7 and 1198 and the “Rest Periods” Section of the Applicable IWC Wage Order)

(Alleged by Plaintiff Individually and on behalf of the Rest Period Subclass Against all Defendants)

84. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

85. Labor Code section 226.7 requires employers, including Defendants, to provide to their employees, including Plaintiff, paid rest periods as mandated by the IWC Wage Orders.

86. Labor Code section 1198 states that the “maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

87. The “Rest Periods” section of the applicable IWC Wage Order states,
[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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.

It further states, “[a]uthorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

88. On information and belief, Plaintiff and the Rest Period Subclass were subject to the same policies, practices, and procedures governing the provision and scheduling of rest periods.

89. Plaintiff and, on information and belief, the Rest Period Subclass were not authorized and permitted to take compliant rest periods because they were regularly required to remain on-duty at all times.

90. Labor Code section 226.7(c) states, “[i]f an employer fails to provide an employee a...rest...period in accordance with a state law...the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the...rest...period is not

1 provided.”

2 91. Even though Plaintiff and, on information and belief, Rest Period Subclass members were
3 not authorized and permitted to take off-duty rest periods of at least 10 minutes for each four-hour work
4 period or major fraction thereof, Defendants did not pay Plaintiff and the Rest Period Subclass appropriate
5 rest period premium wages for each day in which Defendants did not authorize and permit Plaintiff and
6 the Rest Period Subclass to take compliant rest periods, in violation of Labor Code section 226.7 and the
7 applicable IWC Wage Order.

8 92. On information and belief, Defendants have a common policy, pattern, and practice of
9 failing to compensate Plaintiff and the Rest Period Subclass with an hour of pay at their regular rate of
10 pay for the times that Plaintiff and the Rest Period Subclass were not authorized to take rest periods of at
11 least 10 minutes for each four-hour work period, or major fraction thereof.

12 93. Plaintiff and the Rest Period Subclass suffered and continue to suffer losses related to
13 Defendants’ failure to pay an additional hour of pay for each day a rest period was not provided and the
14 associated use and enjoyment of compensation due and owing to them as a direct result of Defendants’
15 Labor Code and IWC Wage Order violations.

16 94. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited
17 to, any and all wages due, monies, and interest, to the extent permitted by law.

18 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PROVIDE RECOVERY PERIODS**

21 **(Violation of Labor Code § 226.7 and California Code of Regulations, Title 8, § 3395)**

22 **(Alleged by Plaintiff Individually and on Behalf of the Recovery Period Subclass Against All**
23 **Defendants)**

24 95. Plaintiff re-alleges and incorporates by reference the allegations contained in the
25 paragraphs above, as though fully set forth herein.

26 96. Labor Code section 226.7(a) states that “‘recovery period’ means a cooldown period
27 afforded an employee to prevent heat illness.”

28 97. Labor Code section 226.7(b) states “[a]n employer shall not require an employee to work

1 during a...recovery period mandated pursuant to an applicable statute, or applicable regulation, standard,
2 or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or
3 the Division of Occupational Safety and Health.”

4 98. California Code of Regulations, Title 8, section 3395(d)(1) provides that

5 [s]hade shall be present when the temperature exceeds 80 degrees
6 Fahrenheit. When the outdoor temperature in the work area exceeds 80
7 degrees Fahrenheit, the employer shall have and maintain one or more areas
with shade at all times while employees are present that are either open to
the air or provided with ventilation or cooling [...]

8 99. California Code of Regulations, Title 8, section 3395(d)(3) further provides that
9 “[e]mployees shall be allowed and encouraged to take a preventative cool-down rest in the shade when
10 they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted
11 at all times.”

12 100. Pursuant to California Code of Regulations, Title 8, section 3395(a)(2)(A), because
13 Defendants operate in the “Agriculture” industry, they are subject to the heightened “High Heat
14 Procedures” of California Code of Regulations, Title 8, section 3395(e), which requires an employer to
15 “implement high-heat procedures when the temperature equals or exceeds 95 degrees Fahrenheit.” The
16 “High Heat Procedures” shall include, to the extent practicable:

17 (1) Ensuring that effective communication by voice, observation, or electronic means
18 is maintained so that employees at the work site can contact a supervisor when
19 necessary. An electronic device, such as a cell phone or text messaging device, may
20 be used for this purpose only if reception in the area is reliable.

21 (2) Observing employees for alertness and signs or symptoms of heat illness. The
22 employer shall ensure effective employee observation/monitoring by implementing
23 one or more of the following: (A) Supervisor or designee observation of 20 or fewer
24 employees, or (B) Mandatory buddy system, or (C) Regular communication with
25 sole employee such as by radio or cellular phone, or (D) Other effective means of
26 observation.

27 (3) Designating one or more employees on each worksite as authorized to call for
28 emergency medical services, and allowing other employees to call for emergency

services when no designated employee is available.

(4) Reminding employees throughout the work shift to drink plenty of water.

(5) Pre-shift meetings before the commencement of work to review the high heat procedures, encourage employees to drink plenty of water, and remind employees of their right to take a cool-down rest when necessary.

(6) For employees employed in agriculture, the following shall also apply: When temperatures reach 95 degrees or above, the employer shall ensure that the employee takes a minimum ten-minute net preventative cool-down rest period every two hours. The preventative cool-down rest period required by this paragraph may be provided concurrently with any other meal or rest period required by Industrial Welfare Commission Order No. 14 (8 CCR 11140) if the timing of the preventative cool-down rest period coincides with a required meal or rest period thus resulting in no additional preventative cool-down rest period required in an eight hour workday. If the workday will extend beyond eight hours, then an additional preventative cool-down rest period will be required at the conclusion of the eighth hour of work; and if the workday extends beyond ten hours, then another preventative cool-down rest period will be required at the conclusion of the tenth hour and so on. For purposes of this section, preventative cool-down rest period has the same meaning as “recovery period” in Labor Code Section 226.7(a).

101. California Code of Regulations, Title 8, section 3395(i) further provides that “[t]he employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request.”

102. California Code of Regulations, Title 8, section 3395(c) also provides that

[e]mployees shall have access to potable drinking water...including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge. The water shall be located as close as practicable to the areas where employees are working. Where drinking water is not plumbed or otherwise continuously supplied, it shall be provided in sufficient quantity at the beginning of the work shift to provide one quart per employee per hour for drinking for the entire shift. Employers

may begin the shift with smaller quantities of water if they have effective procedures for replenishment during the shift as needed to allow employees to drink one quart or more per hour. The frequent drinking of water...shall be encouraged.

103. Defendants failed to establish, implement, and maintain an effective heat illness prevention plan, and failed to make any such plan available at the worksite to Plaintiff and, on information and belief, to other employees.

104. Plaintiff and, on information and belief, the Recovery Period Subclass were subject to the same policies, practices, and procedures governing the provision and scheduling of recovery periods.

105. On information and belief, Defendants have a pattern and practice of requiring Plaintiff and the Recovery Period Subclass to remain on duty at all times, and of not providing them with compliant recovery periods when the outdoor temperature in the work area exceeded 80 degrees Fahrenheit.

106. Labor Code section 226.7(d) requires employers, including Defendants, to provide to their non-exempt employees, including Plaintiff, paid recovery periods as mandated by California law.

107. Labor Code section 226.7(c) states that

[i]f an employer fails to provide an employee a...recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the...recovery period is not provided.

108. Even though Plaintiff and, on information and belief, members of the Recovery Period Subclass were not authorized or permitted to take off-duty recovery periods, Defendants did not pay Plaintiff and the Recovery Period Subclass the appropriate recovery period premium wages for each day that Defendants did not authorize and permit Plaintiff and the Recovery Period Subclass to take compliant recovery periods, in violation of Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d).

109. On information and belief, Defendants have a common policy, pattern, and practice of failing to compensate Plaintiff and the Recovery Period Subclass with an hour of pay at their regular rate of pay for the times that Plaintiff and the Recovery Period Subclass were not authorized to take recovery periods, in violation of Labor Code section 226.7 and California Code of Regulations, Title 8, section

1 3395(d).

2 110. Plaintiff and the Recovery Period Subclass suffered and continue to suffer losses related to
3 Defendants' failure to pay an additional hour of pay for each day a recovery period was not provided and
4 the associated use and enjoyment of compensation due and owing to them as a direct result of Defendants'
5 violations of the Labor Code and the California Code of Regulations.

6 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PAY MINIMUM AND REGULAR WAGES**

9 **(Violation of Labor Code §§ 1194, 1197, 1198, and the "Minimum Wages" Section of the**
10 **Applicable IWC Wage Order)**

11 **(Alleged by Plaintiff Individually and on behalf of the Non-Exempt Class Against all Defendants)**

12 111. Plaintiff re-alleges and incorporates by reference the allegations contained in the
13 paragraphs above, as though fully set forth herein.

14 112. Labor Code section 1197 provides, "[t]he minimum wage for employees fixed by the
15 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
16 minimum wage so fixed is unlawful."

17 113. The "Minimum Wages" section of the applicable IWC Wage Order provides that an
18 employer may not pay employees less than the applicable minimum for all hours worked.

19 114. The applicable IWC Wage Order defines the term "hours worked" as "the time during
20 which an employee is subject to the control of an employer, and includes all the time the employee is
21 suffered or permitted to work, whether or not required to do so."

22 115. Furthermore, pursuant to Labor Code section 1198,

23 [t]he maximum hours of work and the standard conditions of labor fixed by
24 the commission shall be the maximum hours of work and the standard
25 conditions of labor for employees. The employment of any employee for
longer hours than those fixed by the order or under conditions of labor
prohibited by the order is unlawful.

26 116. Defendants failed to pay Plaintiff and, on information and belief, Non-Exempt Class
27 members at least minimum wages for all the time spent working and under the control of Defendants. For
28 example, Plaintiff, and on information and belief, Non-Exempt Class members were required to perform

1 certain duties before they clocked in and after they clocked out, and were not compensated for all hours
2 they were suffered or permitted to work. In addition, Plaintiff and, on information and belief, other Non-
3 Exempt Class members regularly worked through their legally authorized rest periods and were not
4 compensated for this time.

5 117. Labor Code section 1194 provides, in part, that any employee receiving less than the legal
6 minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including
7 interest thereon, reasonable attorney's fees, and costs of suit.

8 118. Labor Code section 1194.2 allows an employee to recover liquidated damages in an amount
9 equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code section 1194.

10 119. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to the use
11 and enjoyment of compensation due and owing to them as a direct result of Defendants' unlawful acts and
12 Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional
13 limitations of this Court.

14 120. Plaintiff seeks all available remedies for Defendants' violations including, but not limited
15 to, any and all wages due, monies, interest, liquidated damages, attorney's fees, and costs to the extent
16 permitted by law.

17 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PAY ALL OVERTIME WAGES**

20 **(Violation of Labor Code §§ 510, 1194, 1198, and the "Hours and Days of Work" Section of the**

21 **Applicable IWC Wage Order)**

22 **(Alleged by Plaintiff Individually and on behalf of the Non-Exempt Class Against all Defendants)**

23 121. Plaintiff re-alleges and incorporates by reference the allegations contained in the
24 paragraphs above, as though fully set forth herein.

25 122. Labor Code section 510 provides,

26 [a]ny work in excess of eight hours in one workday and any work in excess
27 of 40 hours in any one workweek and the first eight hours worked on the
28 seventh day of work in any one workweek shall be compensated at the rate
of no less than one and one-half times the regular rate of pay for an
employee. Any work in excess of 12 hours in one day shall be compensated

at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

123. The “Hours and Days of Work” section of the applicable IWC Wage Order states that, effective as of January 1, 2020, until January 1, 2021,

an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee’s regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

124. Labor Code section 1194 provides that any employee receiving less than the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

125. Furthermore, pursuant to Labor Code section 1198,

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

126. The applicable IWC Wage Order defines the term “hours worked” 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.”

127. Plaintiff and, on information and belief, the Non-Exempt Class regularly worked over nine hours per day and fifty hours per week while employed by Defendants. Plaintiff and, on information and belief, the Non-Exempt Class did not receive all overtime compensation owed for all overtime hours worked over nine hours per day and/or fifty hours per week during their employment with Defendants. Defendants failed to pay Plaintiff and, on information and belief, Non-Exempt Class members at the proper overtime rate for all the time spent working and under the control of Defendants. For example, Plaintiff and, on information and belief, Non-Exempt Class members frequently worked more than their scheduled hours due to not receiving any breaks during their entire shifts for several days a week. In addition, Plaintiff, and on information and belief, Non-Exempt Class members had duties which they were

1 required to perform before clocking in and after clocking out, and were not compensated for performing
2 these duties. At no time were Plaintiff and, on information and belief, Non-Exempt Class members
3 compensated for all of the overtime hours worked.

4 128. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to the use
5 and enjoyment of compensation due and owing to them as a direct result of Defendants' unlawful acts and
6 Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional
7 limitations of this Court.

8 129. Plaintiff seeks all available remedies for Defendants' violations including, but not limited
9 to, any and all wages due, monies, interest, attorney's fees, and costs to the extent permitted by law.

10 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENDITURES**

13 **(Violation of Labor Code § 2802)**

14 **(Alleged by Plaintiff Individually and on behalf of the Non-Exempt Class Against all Defendants)**

15 130. Plaintiff re-alleges and incorporates by reference the allegations contained in the
16 paragraphs above, as though fully set forth herein.

17 131. Labor Code section 2802 requires an employer to indemnify its employees for all necessary
18 expenditures or losses incurred by an employee in direct consequence of the discharge of his or her duties
19 of employment.

20 132. Labor Code section 2802(b) states, "[a]ll awards made by a court ... for reimbursement of
21 necessary expenditures" shall carry interest, at the same rate as judgments in civil actions, and said interest
22 will accrue from the date on which the employee incurred the necessary expenditure including, but not
23 limited to, reasonable costs and attorney's fees incurred by the employee in enforcing their rights granted
24 pursuant to Labor Code section 2802. The exact amount of the necessary expenditures or losses is in an
25 amount to be proven at time of trial.

26 133. Furthermore, Labor Code section 2802(c) states, "[f]or the purposes of this section, the
27 term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to,
28 attorney's fees incurred by the employee enforcing the rights granted by this section."

135. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the Non-Exempt Class suffered and continue to suffer substantial losses related to Defendants' failure to indemnify them for the expenses and losses, including the use and enjoyment of such monies, lost interest on such monies and expenses, and attorney's fees and costs in seeking to compel Defendants to fully perform its obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

136. Plaintiff seeks to recover in a civil action to the fullest extent permissible all available remedies including, but not limited to, the unpaid balance of the indemnification from Defendants' violations, interest thereon permitted by Labor Code section 2802(b), reasonable attorney's fees and costs of suit, declaratory relief, and any other permitted remedies including those permitted pursuant to Labor Code section 2802 and Code of Civil Procedure section 1021.5. The exact amount of reimbursement, interest, costs and attorney's fees will be in an amount to be proved at time of trial.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

SEVENTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE RECORDS

(Violation of Labor Code §§ 1174, 1198, and the “Records” Section of the Applicable IWC Wage Order)

(Alleged by Plaintiff Individually and on behalf of the Non-Exempt Class Against all Defendants)

137. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

138. Labor Code section 1174(d) requires, in part, that employers, including Defendants,

maintain accurate records showing the hours worked daily by their employees and to whom wages were paid.

139. Additionally, the “Records” section of the applicable IWC Wage Order obligates the employer, including Defendants, to keep accurate information with respect to each one of their employees including, but not limited to, the total wages paid each payroll period, and time records showing when the employee begins and ends each work period, meal periods, split shift intervals, the total daily hours worked, the total hours worked in the payroll period, and the applicable rates of pay.

140. Defendants violated Labor Code sections 1174(d) and 1198 and the applicable Wage Order when they failed to keep accurate information and records regarding each employees’ hours worked and meal periods.

141. Defendants intentionally failed to record Plaintiff and the Non-Exempt Class members’ beginning and ending times of all work periods, break periods, including meal periods, and the total hours they worked during the payroll period. In addition, Defendants required Plaintiff and the Non-Exempt Class Members to adjust their time records to reflect legally compliant meal periods with both constructive and actual knowledge that no compliant meal break had been taken by Plaintiff and other non-exempt employees.

142. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by Labor Code section 1174(d) is subject to a penalty. On information and belief, Defendants intentionally failed to maintain accurate records of the Non-Exempt Class members’ total daily hours, including meal periods taken, the total hours worked in the payroll period, and total wages earned for the payroll period.

143. As a direct result of Defendants’ violations alleged herein, Plaintiff and Non-Exempt Class members have suffered and continue to suffer substantial losses related to Defendants’ failure to record and maintain records of meal periods and time records.

144. Plaintiff, individually and on behalf of the Non-Exempt Class, seeks all available remedies for Defendants’ violations including, but not limited to, injunctive relief, any and all penalties, attorney’s fees, and costs to the extent permitted by law.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code §§ 226, 1198, and the “Records” Section of the Applicable IWC Wage Order)

(Alleged by Plaintiff Individually and on behalf of the Non-Exempt Class Against all Defendants)

145. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

146. Labor Code section 226(a) requires that employers, including Defendants, furnish their employees with each wage payment an accurate and itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

147. Labor Code section 226(e), in part, permits employees suffering injury to collect the greater of all actual damages or the amount specified in Labor Code section 226 per violation.

148. Labor Code section 226(e)(2)(B) states, in pertinent part,

[a]n employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

149. Labor Code section 226(h) states, “[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.”

150. As a result of Defendants’ conduct during the applicable statutory period, Defendants knowingly and intentionally failed to provide Plaintiff and Non-Exempt Class members an accurate itemized wage statement with each wage payment as required by Labor Code section 226(a). Defendants knowingly and intentionally failed to provide Plaintiff and members of the Non-Exempt Class with each

1 wage payment an accurate wage statement showing, among other things, the total regular and overtime
2 hours worked during the pay period, the corresponding gross and net wages earned, and all applicable
3 hourly rates and the corresponding number of hours worked at each hourly rate.

4 151. Defendants' failure to provide accurate wage statements deprived Plaintiff and members
5 of the Non-Exempt Class of the ability to promptly and easily understand and question the calculation and
6 rate of pay and hours used to calculate the wages paid by Defendants. Plaintiff and members of the Non-
7 Exempt Class, therefore, had no way to dispute any error in the payment or calculation of their wages, all
8 of which resulted in an unjustified economic enrichment to Defendants, and Plaintiff and members of the
9 Non-Exempt Class suffered actual damages as a result.

10 152. Defendants' failure to provide accurate itemized wage statements constitutes an injury as
11 defined under Labor Code section 226(e)(2)(B). Therefore, Plaintiff and members of the Non-Exempt
12 Class have suffered an injury for purposes of Labor Code section 226 and are entitled to recover the greater
13 of all actual damages or the amount specified in section 226 per violation.

14 153. Plaintiff and Non-Exempt Class members suffered and continue to suffer injuries, losses
15 and actual damages as a direct result of Defendants' Labor Code violations, including lost interest on such
16 wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligations,
17 in an amount to be shown according to proof at trial.

18 154. Plaintiff seeks to recover all available remedies including, but not limited to, damages,
19 penalties, attorney's fees, costs, and injunctive relief to the fullest extent permitted by law.

20 WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

21 **NINTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

23 **(Violation of Labor Code §§ 201, 202, and 203)**

24 **(Alleged by Plaintiff Individually and on behalf of the Waiting Time Penalties Subclass Against all**
25 **Defendants)**

26 155. Plaintiff re-alleges and incorporates by reference the allegations contained in the
27 paragraphs above, as though fully set forth herein.

28 156. Labor Code section 201 requires Defendants to immediately pay any wages, without

1 abatement or reduction, to any employee who is discharged. Labor Code section 202 requires Defendants
2 to pay any and all wages due and owing to an employee not having a written contract for a definite period,
3 who quits his or her employment, within 72 hours of the employee quitting his or her employment, unless
4 the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee
5 is entitled to his or her wages at the time of quitting.

6 157. For violation of Labor Code sections 201 and 202, Labor Code section 203 causes the
7 unpaid wages of an employee to continue as a penalty from the due date thereof, at the same rate until
8 paid or until an action is commenced, but the wages shall not continue for more than 30 days.

9 158. As a result of Defendants' conduct during the applicable statutory period, Defendants
10 willfully failed to pay Plaintiff and, on information and belief, the Waiting Time Penalties Subclass all
11 wages due and owing to them, including minimum wages, overtime wages, and regular wages for all the
12 time they were suffered or permitted to work or were engaged in work under Defendants' control and all
13 meal period premiums, rest period premiums, and recovery period premiums owed within the time
14 required by Labor Code sections 201 and 202, as applicable.

15 159. To date, Plaintiff has not yet received all wages due and payable including, but not limited
16 to, minimum wages, overtime wages, regular wages, and meal, rest, and recovery period premium wages
17 owing to him. On information and belief, members of the Waiting Time Penalties Subclass have not yet
18 received all minimum wages, overtime wages, regular wages, and meal, rest, and recovery period premium
19 wages due and owing to them.

20 160. As a direct result of Defendants' violations alleged herein, Plaintiff and the Waiting Time
21 Penalties Subclass members suffered and continue to suffer losses related to the use and enjoyment of
22 wages due and owing to them, all to their respective damage in an amount to be shown according to proof
23 at trial and within the jurisdictional limitations of this Court.

24 161. Plaintiff seeks all available remedies for Defendants' violations to the fullest extent
25 permissible.

26 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

27 ///

28 ///

TENTH CAUSE OF ACTION

FAILURE TO PROVIDE EMPLOYMENT FILE

(Violation of Labor Code §§ 226, 432, and 1198.5)

(Alleged by Plaintiff Individually and on behalf of the Non-Exempt Class Against all Defendants)

162. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

163. Labor Code section 226(b) mandates that employers, “shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.”

164. Labor Code section 226(c) further provides,

[a]n employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.

165. Labor Code section 1198.5 grants every current and former employee the right to receive a copy of the personnel records that the employer maintains. Labor Code section 1198.5 mandates that the contents of the personnel records be available for inspection within, but no later than 30 days from the date the employer receives the written request.

166. Labor Code section 226(f) imposes a penalty on employers for violations of Labor Code section 226(c). Labor Code section 226(f) states that “[a] failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.”

167. Labor Code section 1198.5(a) provides that “[e]very current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.”

168. Labor Code section 1198.5(b)(1) goes on to state that “[t]he employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from

1 the date the employer receives a written request...”

2 169. An employer who fails to provide a copy of the records requested is also subject to a penalty
3 of \$750 as outlined in Labor Code section 1198.5(k), which states,

4 [i]f an employer fails to permit a current or former employee, or his or her
5 representative, to inspect or copy personnel records within the times
6 specified in this section, or times agreed to by mutual agreement as provided
7 in this section, the current or former employee or the Labor Commissioner
may recover a penalty of seven hundred fifty dollars (\$750) from the
employer.

8 170. Plaintiff alleges that Defendants have a policy, practice, procedure, guideline and/or culture
9 of failing to provide him and other employees with a copy of their employment and personnel records
10 upon request in the time frame prescribed by California law. For instance, Plaintiff sent a written request
11 to Defendants to obtain and/or inspect his personnel file and employment records following his
12 termination, and did not receive a response within thirty days of his request. Accordingly, Defendants
13 have violated Labor Code sections 226(b) and (c) and Labor Code section 1198.5.

14 171. Plaintiff and other employees of Defendants have suffered, and continue to suffer, injuries
15 and damages as a consequence of Defendants’ deliberate failure to provide employment and personnel
16 records upon request within the time frame required by the Labor Code. Specifically, Plaintiff and other
17 employees of Defendants were denied their legal right and protected interest in obtaining and/or inspecting
18 their personnel and employment records.

19 172. Plaintiff and other employees of Defendants are entitled to, and seek to recover, penalties
20 pursuant to Labor Code sections 226(f) and 1198.5(k) for violations of Labor Code sections 226(c) and
21 1198.5.

22 173. Plaintiff, on behalf of himself and other employees of Defendants, is entitled to and seeks
23 to recover reasonable attorneys’ fees and costs as provided by Code of Civil Procedure section 1021.5.

24 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

25 **ELEVENTH CAUSE OF ACTION**

26 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, *ET SEQ.***

27 **(Alleged by Plaintiff Individually and on behalf of the Non-Exempt Class Against all Defendants)**

28 174. Plaintiff re-alleges and incorporates by reference the allegations contained in the

1 paragraphs above, as though fully set forth herein.

2 175. California Business & Professions Code section 17200, *et seq.*, prohibits acts of unfair
3 competition, which includes any “unlawful, unfair or fraudulent business act or practice...”

4 176. Defendants’ Labor Code and IWC Wage Order violations alleged herein constitute
5 “unlawful, unfair or fraudulent business act or practices,” which are prohibited by Business and
6 Professions Code sections 17200-17208 and include, but are not limited to: (i) failure to provide proper
7 meal periods and pay Plaintiff and the Meal Period Subclass premium wages for failure to provide
8 compliant meal periods; (ii) failure to provide proper rest periods and pay Plaintiff and the Rest Period
9 Subclass premium wages for failure to provide compliant rest periods; (iii) failure to provide proper
10 recovery periods and pay Plaintiff and the Recovery Period Subclass premium wages for failure to provide
11 compliant recovery periods; (iv) failure to pay Plaintiff and the Non-Exempt Class all regular, minimum,
12 and overtime wages for all hours suffered or permitted to work and under the control of Defendants; (v)
13 failure to indemnify Plaintiff and the Non-Exempt Class for necessary business expenses incurred in direct
14 consequence of the discharge of their duties and under the direction of Defendants; (vi) failure to maintain
15 accurate records of the hours that Plaintiff and the Non-Exempt Class worked while employed by
16 Defendants; (vii) failure to provide Plaintiff and the Non-Exempt Class with accurate itemized wage
17 statements; (viii) failure to timely pay Plaintiff and members of the Waiting Time Penalties Subclass all
18 wages owed upon separation of their employment with Defendants; and (ix) failure to provide Plaintiff
19 and the Non-Exempt Class with access to their employment file and personnel records.

20 177. Defendants intentionally avoided paying Plaintiff and the Non-Exempt Class wages and/or
21 monies, and other financial obligations attached thereto, to create for Defendants an artificially lower cost
22 of doing business, and thus, undercut its competitors.

23 178. Defendants lowered its costs of doing business by paying Plaintiff and the Non-Exempt
24 Class an amount less than what is required by the California Labor Code and the applicable Wage Order
25 of the Industrial Welfare Commission, thereby unfairly forcing Plaintiff and other similarly situated
26 employees to perform work without fair compensation and benefits.

27 179. Defendants held themselves out to Plaintiff and the Non-Exempt Class as being
28 knowledgeable about, and adhering to, the employment laws of California at all times relevant herein.

1 Plaintiff and the Non-Exempt Class relied on and believed in Defendants' representation concerning
2 Defendants' adherence to the California laws, all to their detriment.

3 180. Defendants' scheme to lower its payroll and operation costs and thus profit, by withholding
4 money owed to the class and withholding wages, compensation and benefits, which are all the property
5 of Plaintiff and the Non-Exempt Class in violation of the California Labor Code and the IWC Wage
6 Orders, as alleged herein, constitutes an "unlawful, unfair or fraudulent business act or practice," under
7 California Business and Professions Code section 17200, *et seq.* As a result of Defendants' unfair
8 competition, Plaintiff and the Non-Exempt Class suffered injury in fact by losing money and/or property.

9 181. Business and Professions Code section 17204, states, in relevant part, "[a]ctions for relief
10 pursuant to this chapter shall be prosecuted...by...a person who has suffered injury in fact and has lost
11 money or property as a result of the unfair competition."

12 182. Defendants acquired money and property owed to Plaintiff and the Non-Exempt Class by
13 means of an unlawful practice that constitutes unfair competition as defined by Business and Professions
14 Code section 17200, *et seq.*

15 183. Plaintiff and the Non-Exempt Class are persons in interest under Business and Professions
16 Code section 17203 to whom money and property should be restored. Business and Professions Code
17 section 17203 states, in relevant part, that "any person may pursue representative claims or relief on behalf
18 of others only if the claimant meets the standing requirements of § 17204."

19 184. Plaintiff is a person who suffered injury in fact and lost money, wages, compensation, and
20 benefits, as a result of Defendants' unfair competition. Thus, pursuant to Business and Professions Code
21 sections 17203 and 17204, Plaintiff may pursue representative claims and relief on behalf of himself and
22 the putative classes.

23 185. Pursuant to Business and Professions Code section 17203, "[t]he court may make such
24 orders or judgments, as may be necessary to restore to any person in interest any money or property, real
25 or personal, which may have been acquired by means of such unfair competition."

26 186. Defendants reaped unfair benefits and illegal profits at the expense of Plaintiff and the
27 Non-Exempt Class by committing the unlawful acts alleged herein. Thus, Defendants must make
28 restitution and/or be subject to other equitable relief pursuant to Business & Professions Code section

17203 and restore all unpaid wages to Plaintiff and the Non-Exempt Class.

187. Plaintiff and the Non-Exempt Class suffered and continue to suffer loss of wages and monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

188. Plaintiff seeks all available remedies on behalf of himself and on behalf of the Non-Exempt Class including, but not limited to, restitution of all wages and all monies owed, all in an amount to be shown according to proof at trial. All such remedies are cumulative of relief available under other laws, pursuant to Business & Professions Code section 17205.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

TWELFTH CAUSE OF ACTION

REPRESENTATIVE CLAIMS UNDER THE CALIFORNIA LABOR CODE PRIVATE

ATTORNEYS GENERAL ACT (PAGA)

(Labor Code §§ 2698, *et seq.*)

(Alleged by Plaintiff Individually and on behalf of all Aggrieved Employees Against all Defendants)

189. Plaintiff hereby incorporates by reference all preceding paragraphs set forth above as though fully set forth herein.

190. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

191. Defendants employed Plaintiff, and Plaintiff had one or more of the alleged violations committed against him. Therefore, Plaintiff is an “aggrieved employee” under PAGA because the alleged violator employed him, and he had one or more of the alleged violations committed against him. As such, Plaintiff is properly suited to represent the interests of other aggrieved employees in a PAGA Representative action.

192. This cause of action involves allegations of violations of Labor Code section 2802 which, pursuant to Labor Code section 2699.5, provides for a civil penalty to be assessed and collected by the

1 LWDA or recovered through a civil action brought by an aggrieved employee on behalf of himself or
2 herself and other current or former employees pursuant to the procedures specified in Labor Code section
3 2699.3.

4 193. Plaintiff seeks civil penalties pursuant to the PAGA for violations of the following Labor
5 Code provisions:

- 6 a. Failure to provide legally compliant meal periods and/or pay premium wages for
7 non-compliant meal periods in violation of Labor Code sections 204, 226.7, 512,
8 and the Meal Periods section of the applicable IWC Wage Order;
- 9 b. Failure to provide legally compliant rest periods and/or pay premium wages for
10 non-compliant rest periods in violation of Labor Code sections 204, 226.7, and the
11 “Rest Periods” section of the applicable IWC Wage Order;
- 12 c. Failure to provide legally compliant recovery periods and/or pay premium wages
13 for non-compliant recovery periods in violation of Labor Code section 226.7 and
14 California Code of Regulations, Title 8, section 3395;
- 15 d. Failure to timely pay all minimum, regular, and/or overtime wages in violation of
16 Labor Code sections 204, 210, 510, 1194, 1197, 1197.1, 1198, and the “Minimum
17 Wages” and the “Hours and Days of Work” sections of the applicable IWC Wage
18 Order;
- 19 e. Failure to indemnify for all necessary business expenditures or losses incurred by
20 the employee in direct consequence of the discharge of his duties, or of his
21 obedience to the directions of the employer, in violation of Labor Code section
22 2802 and the “Uniforms and Equipment” section of the applicable IWC Wage
23 Order;
- 24 f. Failure to maintain accurate records in violation of Labor Code sections 226, 1174,
25 1174.5, and the “Records” section of the applicable IWC Wage Order;
- 26 g. Failure to furnish accurate itemized wage statements in violation of Labor Code
27 section 226, 226.3, and the “Records” section of the applicable IWC Wage Order;
- 28 h. Failure to timely pay all wages due and owing upon separation of employment

and/or the necessary waiting time penalties in violation of Labor Code sections 201, 202, 203, and 210; and

i. Failure to provide employment records in violation of Labor Code sections 226, 432, and 1198.5.

194. Labor Code section 210 provides that any person who fails to pay wages as provided in Labor Code sections 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5, and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff and all other aggrieved employees are entitled to, and do seek, such civil penalty.

195. For violations of Labor Code sections 510 and 512, in addition to any other recovery provided by law, Labor Code section 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for the initial violation and \$100 per pay period for each underpaid employee for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC. Plaintiff expressly disclaims the recovery of underpaid wages on behalf of himself and all other aggrieved employees. Plaintiff and all other aggrieved employees are entitled to, and do seek, such civil penalty.

196. Labor Code section 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation for violations of Labor Code § 226(a). Plaintiff and all other aggrieved employees are entitled to, and seek, such civil penalty.

197. Labor Code section 226(f) imposes a penalty of \$750 recoverable by the employee or the Labor Commissioner for an employer's failure to permit a current or former employee to inspect or receive a copy of employment records within the time set forth in Labor Code section 226(c). Plaintiff and all other aggrieved employees are entitled to, and do seek, such civil penalty.

198. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Plaintiff and all other aggrieved employees are entitled to, and

1 do seek, such civil penalty.

2 199. Labor Code section 1197.1 imposes a civil penalty of \$100 for each underpaid employee
3 for each pay period for which the employee is underpaid, and a subsequent civil penalty of \$250 for each
4 underpaid employee for each pay period for which the employee is underpaid for paying or causing an
5 employee to be paid a wage less than the minimum wage. Plaintiff and all other aggrieved employees are
6 entitled to, and do seek, such civil penalty.

7 200. Labor Code section 2699(f) imposes a civil penalty of \$100 per pay period, per employee
8 for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor
9 Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor
10 Code sections 201, 202, 203, 204, 226(a), 226.7, 432, 510, 512, 1174(d), 1194, 1197, 1197.1, 1198,
11 1198.5, and 2802. Plaintiff and all other aggrieved employees are entitled to, and do seek, such civil
12 penalty.

13 201. Labor Code section 2699(g)(1) provides that an employee who prevails in a civil action
14 brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such,
15 Plaintiff, in his representative capacity on behalf of himself and all other aggrieved employees, is entitled
16 to and seeks attorney's fees and costs.

17 202. Plaintiff, in his representative capacity on behalf of himself and all other aggrieved
18 employees, is entitled to and seeks recovery of reasonable attorney's fees as provided by Labor Code
19 section 218.5 and Code of Civil Procedure section 1021.5.

20 203. Plaintiff, in his representative capacity on behalf of himself and all other aggrieved
21 employees, requests further relief as described in the below prayer for relief.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 24 a. For any and all civil penalties available for the Labor Code violations alleged
25 herein, including, but not limited to, civil penalties under Labor Code sections 210,
26 226, 226.3, 558, 1174.5, 1197.1, and 2699(f);
27 b. For general damages;
28 c. For special damages;

- d. For an award of liquidated damages to the extent permissible by Labor Code sections 1194.2 and 1197.1;
- e. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including pursuant to Code of Civil Procedure section 1021.5, Labor Code sections 218.5, 218.6, 226, 1194, 2802, and 2699, the "common fund" theory, the "substantial benefit" theory, and/or any other applicable law, theory, or doctrine;
- f. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and the Orders of the Industrial Welfare Commission;
- g. For restitution as provided by Business and Professions Code section 17200, *et seq.*;
- h. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code section 17200, *et seq.*;
- i. For an award of damages in the amount of unpaid compensation and monies including, but not limited to, actual damages, unpaid wages, minimum wages, regular wages, overtime wages, waiting time penalties and other penalties according to proof, including interest thereon, to the extent permissible by law;
- j. For an award of an additional hour of pay at the regular rate of compensation for each noncompliant meal, rest, and recovery period, pursuant to Labor Code section 226.7 and the applicable Order of the Industrial Welfare Commission;
- k. For an award of the greater of actual damages or the liquidated damage amounts provided by Labor Code section 226(e) for Defendants' failure to provide accurate itemized wage statements, pursuant to Labor Code section 226(a);
- l. For injunctive relief as provided by the Labor Code including, but not limited to, Labor Code section 226(h) and Business and Professions Code section 17200, *et seq.*;
- m. For indemnification of all losses incurred as a result of employment with Defendants, with interest;

- 1 n. For pre- and post-judgement interest to the extent permitted by law including, but
2 not limited to, Labor Code sections 218.6 and 1194;
- 3 o. For an order imposing a constructive trust upon Defendants to compel it to transfer
4 wages that have been wrongfully obtained and held by Defendants to unpaid
5 employees;
- 6 p. For an accounting to determine all money wrongfully obtained and held by
7 Defendants;
- 8 q. For a declaratory judgment that Defendants violated Labor Code sections 201, 202,
9 203, 204, 223, 226, 226.3, 510, 512, 1174, 1194, 1197, 1198, 1199, and 2802, as
10 well as the “Hours and Days of Work,” “Minimum Wages,” “Records,” “Meal
11 Periods,” and “Rest Periods” sections of the Wage Order of the Industrial Welfare
12 Commission; and
- 13 r. An award of such other and further relief as this Court deems proper and just.

14 **JURY TRIAL DEMAND**

15 Plaintiff hereby demands a trial by jury on all Causes of Action to the extent authorized by law.

16
17 Respectfully submitted,

18 GRAHAMHOLLIS APC

19 Dated: June 1, 2021

20 By: 

21 GRAHAM S.P. HOLLIS
22 VILMARIE CORDERO
23 HALI M. ANDERSON
24 ALEX M. KUNER
25 Attorneys for Plaintiff
26 RODOLFO VEGA
27
28

EXHIBIT 1

March 4, 2021

Attorneys at Law

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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Fondomonte California, LLC
250 North Litchfield Road, Suite 101
Goodyear, AZ 85338

Fondomonte California, LLC
c/o CSC-Lawyers Incorporating Service,
Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Rodolfo Vega's Wage and Hour Claims Against Fondomonte California, LLC

Attn: Labor and Workforce Development Agency and Fondomonte California, LLC:

Please be advised that Rodolfo Vega ("Claimant") has retained our firm to represent him for various claims against his former employer Fondomonte California, LLC ("Fondomonte" or the "Company").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and to the Company of the alleged violations of the California Labor Code ("Labor Code") which Claimant claims that the Company committed against him and all other current and former non-exempt employees who performed work for the Company in the State of California.

Claimant provides this notice, which includes the facts and theories to support the Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2699.3. Claimant intends to file a civil action against the Company to enforce his rights under the Labor Code and seek civil penalties pursuant to the PAGA for the alleged violations of the Labor Code. Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent himself and all other current and former non-exempt employees who performed work for the Company and who have suffered at least one of the wage and hour violations described herein during the relevant time period (collectively, the "aggrieved employees").

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

FACTUAL BACKGROUND

The following factual background is based upon the limited investigation Claimant has been able to conduct to date. Claimant reserves the right to amend this notice letter should additional information come to light at a later date.

Fondomonte is a subsidiary of the Saudi Arabian company Almarai Co., one of the world's largest dairy companies. Fondomonte owns several thousand acres of land near Blythe, California where it grows hay and alfalfa for livestock at Almarai Co.'s dairy farms in Saudi Arabia. The Company also owns several thousand acres of land in Arizona, and several hundred acres of land in the Imperial Valley in California.

Claimant was employed by the Company in Blythe, California from approximately June 4, 2020 to December 12, 2020 as a concrete laborer in the Company's irrigation department. At all relevant times, Claimant was classified as a non-exempt employee and was compensated on an hourly basis. Claimant was paid at an hourly rate of \$15.00 per hour. During his employment, Claimant regularly worked shifts of ten (10) hours or more hours per day, up to six (6) days per week. Claimant regularly worked overtime hours and was entitled to overtime pay.

Claimant's property in Blythe, California is located directly next to the Colorado River. The river water is diverted and dispersed throughout the Company's property through a series of concrete canals and irrigation ditches. Claimant's job duties included performing concrete maintenance work on these canals and irrigation ditches which run throughout the Company's property. These were typically small concrete jobs, involving minor patchwork which required no more than one to two sacks of concrete mix. Claimant's duties were also not limited solely to concrete work. For example, Claimant's other duties included maintaining dirt slopes which surrounded the Company's crop fields, installing irrigation gates, installing drain pipes, installing check valves, cleaning irrigation ditches, maintaining weeds around the borders of the crop fields, painting, and transporting fertilizer and pesticide containers.

Claimant alleges that the Company denied Claimant and other aggrieved employees specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order. Specifically, the Company failed to provide Claimant and other aggrieved employees with legally compliant meal and/or rest periods or pay them meal and/or rest period premiums; failed to timely pay all minimum, regular, and overtime wages for all hours worked; failed to timely pay all wages due during and upon separation of employment; failed to reimburse for necessary business expenses; failed to issue accurate itemized wage statements; failed to maintain accurate records; and failed to provide Claimant with his personnel file upon request. Upon information and belief, all policies, practices, guidelines, and/or procedures of the Company applicable to Claimant were also applicable to all other aggrieved employees.

Failure to Provide Meal Periods and Rest Periods

Claimant asserts that the Company did not provide Claimant and other aggrieved employees with thirty-minute, off-duty meal periods commencing before the start of their sixth hour of work. Although Claimant signed an "In-Service Meal Break Agreement" ("On Duty Meal Agreement"), Claimant alleges

that the On Duty Meal Agreement is invalid and/or illegal for several reasons. For example, the duties identified in the On Duty Meal Agreement do not accurately describe Claimant's job duties. Additionally, Claimant regularly spent his day performing tasks which did not involve concrete work and/or did not prevent him from taking off-duty meal periods of at least 30-minutes before the commencement of his sixth hour of work. Claimant and other non-exempt employees were forced into entering into invalid on-duty meal agreements because their daily tasks did not make it "*virtually impossible*" for them to take off-duty meal periods. Nonetheless, the Company required Claimant and all other non-exempt employees to sign blanket waivers of off-duty meal breaks at the commencement and as a condition of their employment with the Company.

Finally, Claimant alleges that he missed off-duty meal periods because his supervisor would not allow him to take his meal breaks at an appropriate time prior to preparing the concrete mix. Instead, Claimant was required to work through the time he should take his meal break and have to take a late meal break at some other time, if possible, during the work day. Claimant's supervisors regularly would tell him not to take a timely meal break and to instead continue working.

As a result, Claimant and other aggrieved employees frequently took late lunch periods, and had to remain on-duty during their lunch periods even though the tasks being performed did not necessarily require them to remain on duty. Claimant alleges that nearly every day, there was an adequate time at which he could have taken a timely meal break, but he would be told to continue working and/or begin the concrete work instead, and have to take a late break, if he was able to take one at all.

Additionally, Claimant would typically be situated out among the Company's property and not anywhere near the central office or break room at the time he typically took a meal break. When he was on Company property, he drove a Company-owned vehicle around the property, and Claimant was ordered not to drive the vehicle back to the break room or drive the vehicle off the premises during his meal period. Claimant therefore was required to take his break wherever he was placed among the Company's property and to monitor the Company vehicle, and could not leave the premises or use a suitable break area. The Company therefore failed to provide Claimant and other aggrieved employees an opportunity to take timely, off-duty meal periods, in violation of California law. When Claimant worked shifts over ten hours, he was also not provided the opportunity to take a second thirty-minute, off-duty meal period.

For these same reasons, Claimant also alleges that the Company did not authorize and permit him or other aggrieved employees to take a legally-compliant, off-duty ten-minute rest period for every four (4) hours worked or major fraction thereof. When Claimant did have time to take a rest period, he had to remain on duty to monitor ongoing concrete work and make himself available to answer any work-related phone calls from his supervisors. Given that Claimant and other aggrieved employees frequently worked shifts of ten hours or longer, Claimant and other aggrieved employees were authorized to receive rest periods for every four (4) hours of work or major fraction thereof, but were denied the right to do so by the Company.

Claimant made several verbal complaints to the Company regarding his inability to take timely meal and/or rest periods. Thus, the Company knew or should have known that Claimant and other aggrieved employees were not provided with the opportunity to take legally-compliant meal periods

and/or rest periods. Despite this, the Company did not compensate Claimant and, on information and belief, other aggrieved employees an additional hour of pay at the employee's regular rate of pay for all work periods during which a meal or rest period was not provided, as required under California law. Thus, the Company owes Claimant and other aggrieved employees meal and rest period premium wages for each workday Claimant and other aggrieved employees were not provided with a compliant meal or rest period.

Failure to Pay Minimum, Regular, and Overtime Wages

Claimant and, on information and belief, other aggrieved employees were also not paid all minimum, regular, and/or overtime wages for all time spent working because the Company failed to pay them for all time they spent performing duties necessary to fulfill the requirements of their jobs. For example, on a typical day, Claimant would have to pass by a security booth prior to clocking in where he would have to stop and have his temperature checked before he could continue toward the main office. The guard at the security booth would also provide Claimant with the keys to the Company-owned vehicle Claimant would use to complete his duties that day. Once passing the security booth and entering the Company's main office building, Claimant would have to walk through a hallway to reach the employee break room where the Company had two separate time clocks for employees to use. One time clock was a biometric fingerprint scanner, while the other was a physical/analogue punch clock which provided an actual time stamp on a piece of paper. Claimant and other aggrieved employees were required to punch in on both clocks. Claimant and other aggrieved employees frequently had to wait in line behind other employees for several minutes before they were finally able to use each time clock. At the end of the day, Claimant would have to clock out in the same employee break room on the same time clocks, and then walk back outside to the security booth to turn in the keys to the vehicle after he was already off-the-clock. Only after the keys were returned to the security guard would Claimant finally be off duty, even though he had already clocked out for the day.

Claimant and other aggrieved employees were also not paid all minimum, regular, and overtime wages rightfully owed because Claimant and other aggrieved employees were required to work through meal periods even though employees were required to note that a thirty-minute meal period had been taken. Even though Claimant signed the On Duty Meal Agreement, he performed several tasks which did not require him to remain on duty during his meal periods, but he was still required to do so. Additionally, the Company has the practice of requiring Claimant and other aggrieved employees to carry their manual time card with them throughout the day so that the employees can hand-write their break times on their card. When a meal period was missed, late, short, or interrupted, the Company would still require Claimant to write in a fully compliant, thirty-minute meal break, even though one was not taken. As a result, Claimant was not paid all wages owed for time he actually spent working.

Failure to Provide Reimbursement

The Company also failed to reimburse Claimant and other aggrieved employees for all necessary expenses that were incurred in the discharge of their job duties. For example, the vehicle which Claimant frequently operated was equipped with a two-way radio so that he could communicate with supervisors and other personnel who remained back at the Company's main office area. The radio, however, was broken, and despite Claimant making the Company aware that the radio was not functioning, the

Company never fixed the radio or provided Claimant with a replacement. As a result, Claimant was required to use his personal cell phone instead of the vehicle's radio system. Claimant was never reimbursed for the necessary use of his personal cell phone in the discharge of his work duties.

Failure to Maintain Accurate Records and Provide Accurate Itemized Wage Statements

As a direct result of the Company's illegal policies and procedures outlined above, the Company failed to maintain accurate records reflecting all of Claimant's and other aggrieved employees' time worked and wages paid, in violation of California law. For example, the Company has the practice of having employees manually write in their meal break times. Despite frequently taking late or short meal breaks, or missing them altogether, Claimant was ordered by the Company to write in a fully compliant, thirty-minute meal break taken before the end of his fifth hour of work. The Company's time records therefore do not accurately reflect the time Claimant actually worked. Because of this, the wage statements issued by the Company did not include the correct number of hours worked, or the correct amount of gross and net wages earned. Due to the Company's failure to include accurate information on the issued wage statements, Claimant and other aggrieved employees were unable to promptly and easily determine the correct number of total hours worked or the correct amount of gross and net wages earned and owed during each pay period.

Failure to Timely Pay All Wages Due During and Upon Separation of Employment

Due to the foregoing allegations of Labor Code violations, the Company failed to timely pay Claimant and other aggrieved employees all wages due and payable during and upon separation of employment, including regular, minimum, and overtime wages for all hours worked, and meal and/or rest period premium wages.

Failure to Provide Employment Records

Upon his separation of employment, Claimant requested a copy of all his employment records and all documents he signed during his employment. Claimant was merely told that "it will take a while" to gather his records. Claimant did not receive his records within thirty days of his request, and in fact never received his records at all until the records were requested again by his retained counsel.

Due to the foregoing Labor Code violations, the Company denied Claimant and other aggrieved employees certain rights afforded to them under the California Labor Code and IWC Wage Orders. Claimant makes these claims against the Company on behalf of himself and all other current or former non-exempt employees of the Company in the state of California.

**FAILURE TO PROVIDE, AUTHORIZE, AND PERMIT COMPLIANT MEAL PERIODS
AND/OR REST PERIODS OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 226.7, 512, 558, 1198, and the "Meal Periods" and
"Rest Periods" sections of the applicable IWC Wage Order)

Labor Code § 226.7(b) states, "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation,

standard, or order of the Industrial Welfare Commission...” Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Labor Code § 512(a) states, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” and “[a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

The “Meal Periods” section of the applicable IWC Wage Order states, “[a]n employer may not employ an employee for a work period of more than five (5) hours without providing the employee with a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” It further provides that, “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.”

The “Meal Periods” section of the applicable IWC Wage Order also states, “[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to.”

The “Rest Periods” section of the applicable IWC Wage Order states, “[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. The authorized 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.”

Labor Code section 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

As set forth above, the Company failed to provide Claimant and other aggrieved employees with the opportunity to take uninterrupted, off-duty meal periods of at least thirty-minutes before the start of their sixth hour of work and did not authorize and permit Claimant and other aggrieved employees to take legally-compliant rest periods, as required by California law. Further, not all of Claimant’s duties were, by nature, tasks which prevented him from being relieved of all duty. The Company failed to pay Claimant and other aggrieved employees one hour of premium wages for each day a compliant meal period was not provided, and one hour of premium wages for each day a compliant rest period was not authorized or permitted. Claimant will pursue all remedies for the Company’s violations on behalf of himself and other aggrieved employees to the extent allowed by law.

FAILURE TO PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 204, 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the “Minimum Wages” and “Hours and Days of Work” sections of the applicable IWC Wage Order)

Labor Code § 204(a) states in pertinent part, “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Furthermore, Labor Code § 204(b)(1) states, “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.”

Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code § 1197.1 provides that, “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...” Labor Code § 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code § 510 states, “[e]ight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code § 1194(a) states, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code § 1194.2.

Labor Code section 223 states, “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Labor Code section 225.5 provides that “...every person who unlawfully withholds wages due any employee in violation of Section...223 shall be subject to a civil penalty” of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

The “Hours and Days of Work” section of the applicable IWC Wage Order states that, effective January 1, 2020, “an employee shall not be employed more than nine (9) hours per workday or fifty (50)

hours per workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek." The "Minimum Wages" section of the applicable IWC Wage Order states that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period..."

As set forth above, the Company failed to pay Claimant and other aggrieved employees all minimum, regular, and overtime wages, as required by law. The Company required Claimant and other aggrieved employees to perform necessary work-related tasks while off-the-clock, such as checking out and returning keys for Company-owned vehicles, and required Claimant and other aggrieved employees to work through rest periods without paying rest period premium wages. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

(Labor Code § 2802 and the "Uniforms and Equipment" section of the applicable IWC Wage Order)

Labor Code § 2802(a) provides in pertinent part, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Labor Code § 2802(b) states, "[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss." Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Consequently, Claimant will also request reimbursement of the attorney's fees and incurred in pursuing this matter.

The "Uniforms and Equipment" section of the applicable IWC Wage Order states 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..."

As set forth above, the Company required Claimant to communicate with supervisors and other employers who were not located in the same areas. The Company failed to provide Claimant with an adequate radio to communicate with the supervisors and other employees, despite his requests for one. As a result, Claimant was forced to use his personal cell phone, and was not reimbursed for doing so. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved employees to the extent allowed by law.

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FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 1174, 1174.5, 1198, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 1174 states, “[e]very person employing labor in this state shall... [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, ..., employees employed at the respective plants or establishments.”

The “Records” section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay. The “Records” section further states that “this information shall be made readily available to the employee upon reasonable request.”

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

As set forth above, the Company violated these requirements by failing to accurately record employee hours worked including, but not limited to, the Company’s failure to record the proper beginning and end of each work period, the correct beginning and end of each meal period, and the total hours worked during the pay period. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, 1198, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 226(a) states, in pertinent part, that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: “(1) gross wages earned, (2) total hours worked by the employee, ..., (5) net wages earned, ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

Labor Code § 226(e) imposes a penalty of 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 exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and reasonable attorney’s fees. Labor Code § 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code § 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

As set forth above, the Company failed to provide Claimant and other aggrieved employees with accurate itemized wage statements that comply with the requirements of the Labor Code, because the

wage statements issued did not include the correct total regular hours worked, the correct amount of gross and net wages earned, the correct amount of overtime hours worked, and all applicable hourly rates and the corresponding number of hours worked at each hourly rate. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES DUE

(Labor Code §§ 201, 202, 203, 204, 210, 1194, 1194.2, 1198, and the "Minimum Wages" section of the applicable IWC Wage Order)

Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202 provides, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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."

Labor Code § 203(a) further provides, "[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days."

Labor Code § 204(a) states in pertinent part, "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Furthermore, Labor Code § 204(b)(1) states, "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."

Labor Code § 210 mandates that, "... every person who fails to pay the wages of an employee as provided in Sections 201.3...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

The "Minimum Wages" section of the applicable IWC Wage Order also states that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

As set forth above, the Company failed to pay Claimant and other aggrieved employees all minimum, regular, and overtime wages owed, as well as rest period premium wages owed, within the required time during and upon separation of their employment. For the same reasons, the Company further did not pay Claimant and, on information and belief, other aggrieved employees, all wages owed upon separation of employment. As a result of the Company's intentional failure to comply with the aforementioned Labor Code provisions, the Company owes Claimant and other aggrieved employees

waiting time penalties. Claimant will pursue all available remedies for these alleged violation on behalf of himself and all other aggrieved employees to the extent allowed by law.

FAILURE TO PROVIDE EMPLOYMENT FILE

(Labor Code §§ 432, 1198.5, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 1198.5(a) provides that “[e]very current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Labor Code § 1198.5(b)(1) goes on to state that “[t]he employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request...”

Labor Code § 1198.5(k) states that “[i]f an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section...the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.”

The “Records” section of the applicable IWC Wage Order states that employee records “shall be made readily available to the employee upon reasonable request.”

As addressed above, Claimant made a request for his employment file, in writing, and never received the requested information. Claimant is therefore entitled to recover a penalty pursuant to Labor Code § 1198.5(k).

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. 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 558.1(a) states that “[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Section 558.1(b) goes on to state that “...the term ‘other person acting on behalf of an employer’ is limited to a natural person who is an owner, director, officer, or managing agent of the employer...”

Similarly, Labor Code § 1197.1 states that “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.”

As set forth above, the Company underpaid Claimant and aggrieved employees and violated the Labor Code and the applicable IWC Wage Order by failing to pay all regular, minimum, and overtime wages, rest period premium wages, and business expense reimbursements, as required under labor code sections 203, 226, 226.7, 510, 512, 1194, 1197, and 2802, and the relevant sections of the applicable IWC Wage Order. As a result, the Company is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

ATTORNEY’S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 2802, and 2698, *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5, 2802, and 2698, *et seq.*, among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney’s fees and costs.

Under Labor Code § 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorneys’ fees and costs. Claimant has already incurred actual damages, costs and attorney’s fees and he will continue to incur such costs as a result of the Company’s unlawful actions. Claimant will pursue all available remedies including, but not limited to, those provided by the PAGA, on behalf of himself and other aggrieved employees to the extent permitted by law for the violations of law described herein and those later discovered.

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CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, additional compensation owed, and/or other violations to him or any other aggrieved employee of the Company, he reserves the right to revise these facts and/or add any new claims by amending this claim letter or by adding applicable causes of action in his complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex K", with a stylized flourish extending to the right.

Alex Kuner



March 9, 2021

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The following is in response to your request for proof of delivery on your item with the tracking number:
9414 8118 9876 5897 5426 68.

Item Details

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Status Date / Time:	March 8, 2021, 11:07 am
Location:	SACRAMENTO, CA 95813
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic
Recipient Name:	omonte California LLC

Shipment Details

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USPS #	9414811898765897542668
USPS Mail Class	Certified with Return Receipt (Signature)
USPS Status	Your item was delivered at 11:07 am on March 8, 2021 in SACRAMENTO, CA 95813.
USPS History	Out for Delivery, 03/08/2021, 10:20 am, SACRAMENTO, CA 95833 Arrived at Post Office, 03/08/2021, 10:09 am, SACRAMENTO, CA 95813 Departed USPS Regional Destination Facility, 03/07/2021, 6:19 pm, SACRAMENTO CA DISTRIBUTION CENTER Arrived at USPS Regional Destination Facility, 03/07/2021, 12:40 am, SACRAMENTO CA DISTRIBUTION CENTER Arrived at USPS Regional Origin Facility, 03/05/2021, 9:26 pm, SAN DIEGO CA DISTRIBUTION CENTER Accepted at USPS Origin Facility, March 5, 2021, 8:11 pm, SAN DIEGO, CA 92103 Shipping Label Created, USPS Awaiting Item, March 4, 2021, 11:22 pm, SAN DIEGO, CA 92103

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March 9, 2021

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Extra Services:	Certified Mail™ Return Receipt Electronic
Recipient Name:	LLC

Shipment Details

Weight:	3.0oz
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Signature of Recipient:

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USPS Mail Class	Certified with Return Receipt (Signature)
USPS Status	Your item was delivered to the front desk, reception area, or mail room at 11:57 am on March 8, 2021 in GOODYEAR, AZ 85338.
USPS History	Departed USPS Regional Destination Facility, 03/07/2021, 3:18 pm, PHOENIX AZ DISTRIBUTION CENTER ANNEX Arrived at USPS Regional Destination Facility, 03/06/2021, 7:52 pm, PHOENIX AZ DISTRIBUTION CENTER ANNEX Arrived at USPS Regional Origin Facility, 03/05/2021, 9:26 pm, SAN DIEGO CA DISTRIBUTION CENTER Accepted at USPS Origin Facility, March 5, 2021, 8:11 pm, SAN DIEGO, CA 92103 Shipping Label Created, USPS Awaiting Item, March 4, 2021, 11:19 pm, SAN DIEGO, CA 92103

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Date Verified: 03/09/2021 (UTC)

EXHIBIT 2

March 22, 2021

Attorneys at Law

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San Diego, California 92103
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619.692.0822 fax

www.grahamhollis.com

Alex Kuner
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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Fondomonte California, LLC
250 North Litchfield Road, Suite 101
Goodyear, AZ 85338

Fondomonte California, LLC
c/o CSC-Lawyers Incorporating Service,
Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

**Re: LWDA-CM-823689-21
Amended Notice of Rodolfo Vega's Wage and Hour Claims
Against Fondomonte California, LLC**

Attn: Labor and Workforce Development Agency and Fondomonte California, LLC:

This letter shall serve as an amendment regarding the wage and hour claims of Rodolfo Vega ("Claimant") against his former employer Fondomonte California, LLC ("Fondomonte" or the "Company"), in accordance with the California Labor Code Private Attorneys General Act ("PAGA"), Labor Code sections 2698, *et seq.*

Claimant electronically filed the initial notification with the Labor and Workforce Development Agency ("LWDA") and sent the initial notification via Certified Mail to the Company on March 4, 2021, which is enclosed for reference as **Exhibit A**. Since the date of the initial notification, Claimant has become aware of new information and amends the original letter to add the following claims.

ADDITIONAL FACTUAL ALLEGATIONS

The Company failed to provide Claimant and other aggrieved employees with recovery periods when the temperature in the work area exceeded 80 degrees Fahrenheit, and failed to implement "high heat procedures" when the temperature equaled or exceeded 95 degrees Fahrenheit, as required by the California Code of Regulations and the California Labor Code. Plaintiff was employed by the Company at its property in Blythe, California, which lies along the California-Arizona state border. Temperatures in Blythe, California average above 95 degrees Fahrenheit for the entire months of July and August, and have seen highs of 95 degrees or higher in each month from May to

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

September. [Source: www.climate-data.org.] Each month from May through September has an average temperature higher than 80 degrees Fahrenheit. [Source: www.climate-data.org.]

The Company failed to provide Claimant and, on information and belief, other aggrieved employees with compliant recovery periods, as the Company did not provide them off-duty access to shade when the outdoor temperature at the worksites exceeded 80 degrees Fahrenheit. The Company likewise did not take the required “High Heat Procedures” on days when the temperature exceeded 95 degrees Fahrenheit, because the Company did not provide Claimant and other aggrieved employees with an effective means of communication, the Company did not observe employees for alertness and signs or symptoms of heat illness, the Company did not designate one or more employees at the worksite to call for emergency medical services if necessary, the Company did not provide reminders to drink plenty of water throughout the workday, the Company did not hold pre-shift meetings to review the “High Heat Procedures,” and the Company did not ensure that Claimant and other aggrieved employees take ten-minute cool-down periods every two hours. Although the Company had a policy regarding recovery periods, the policy was not enforced, and the Company did not ensure compliance with the policy. The Company also failed to pay Claimant and, on information and belief, other aggrieved employees one additional hour of pay for all the days they were not provided with compliant recovery periods.

FAILURE TO PROVIDE RECOVERY PERIODS

(Labor Code Section 226.7 and California Code of Regulations, Title 8, Section 3395)

Labor Code section 226.7(a) states that a “recovery period” is a “cooldown period afforded an employee to prevent heat illness.” Labor Code section 226.7(b) states: “An employer shall not require an employee to work during a...recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.” Labor Code 226.7(c) states: “If an employer fails to provide an employee a...recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the...recovery period is not provided.”

California Code of Regulations, Title 8, Section 3395(d)(1) states: “Shade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling...” Section 3395(d)(3) further states: “Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.”

Further, because the Company is an agricultural company, Claimant asserts that it is subject to the heightened “High Heat Procedures” of California Code of Regulations, Title 8, Section 3395(e), which requires an employer to “implement high-heat procedures when the temperature equals or exceeds 95

degrees Fahrenheit.” These requirements are additional measures beyond what is required by the prior portions of Section 3395.

These procedures shall include the following to the extent practicable:

- (1) Ensuring that effective communication by voice, observation, or electronic means is maintained so that employees at the work site can contact a supervisor when necessary. An electronic device, such as a **cell phone or text messaging device**, may be used for this purpose only if reception in the area is reliable.
- (2) Observing employees for alertness and signs or symptoms of heat illness. The employer shall ensure effective employee observation/monitoring by implementing one or more of the following: (A) Supervisor or designee observation of 20 or fewer employees, or (b) Mandatory buddy system, or (C) Regular communication with sole employee such as by radio or cellular phone, or (D) Other effective means of observation.
- (3) Designating one or more employees on each worksite as authorized to call for emergency medical services, and allowing other employees to call for emergency services when no designated employee is available.
- (4) Reminding employees throughout the work shift to drink plenty of water.
- (5) Pre-shift meetings before the commencement of work to review the high heat procedures, encourage employees to drink plenty of water, and remind employees of their right to take a cool-down rest when necessary.
- (6) For employees employed in agriculture, the following shall also apply: When temperatures reach 95 degrees or above, the employer shall ensure that the employee takes a minimum ten minute net preventative cool-down rest period every two hours. The preventative cool-down rest period required by this paragraph may be provided concurrently with any other meal or rest period required by Industrial Welfare Commission Order No. 14 (8 CCR 11140) if the timing of the preventative cool-down rest period coincides with a required meal or rest period thus resulting in no additional preventative cool-down rest period required in an eight hour workday. If the workday will extend beyond eight hours, then an additional preventative cool-down rest period will be required at the conclusion of the eighth hour of work; and if the workday extends beyond ten hours, then another preventative cool-down rest period will be required at the conclusion of the tenth hour and so on. For purposes of this section, preventative cool-down rest period has the same meaning as “recovery period” in Labor Code Section 226.7(a).

California Code of Regulations, Title 8, Section 3395(h) also includes training requirements on several topics including, but not limited to:

(A) The environmental and personal risk factors for heat illness, as well as the added burden of heat load on the body caused by exertion, clothing, and personal protective equipment, and

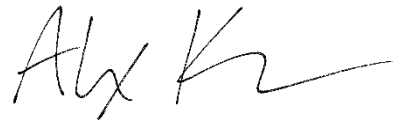
(B) The employer's procedures for complying with the requirements of this standard, including, but not limited to, the employer's responsibility to provide water, shade, cool-down rests, and access to first aid as well as the employees' right to exercise their rights under this standard without retaliation.

As set forth above, the Company failed to provide Claimant and, on information and belief, other aggrieved employees with compliant recovery periods. Even if a recovery period was taken, the Company did not provide the employees with off-duty access to shade when the outdoor temperature at the worksite exceeded 80 degrees Fahrenheit. The Company likewise did not take the required "High Heat Procedures" on days when the temperature exceeded 95 degrees Fahrenheit. Despite this, the Company also failed to pay Claimant and, on information and belief, other aggrieved employees an additional hour of pay when they were not provided with compliant recovery periods. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other aggrieved current and former employees to the extent allowed by law.

CONCLUSION

The facts and claims contained herein are based on the information presently available at the time of this writing. Therefore, if through discovery, investigation, and/or expert review, Claimant becomes aware of additional Labor Code violations and/or compensation owed to him or other losses incurred by him or by any other aggrieved employee of the Company, he reserves the right to revise these facts and/or assert any new claims by amending this claim letter or by adding applicable causes of action in his complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex K", with a stylized flourish extending to the right.

Alex Kuner

Enclosure – Exhibit A

EXHIBIT A

March 4, 2021

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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Fondomonte California, LLC
250 North Litchfield Road, Suite 101
Goodyear, AZ 85338

Fondomonte California, LLC
c/o CSC-Lawyers Incorporating Service,
Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Rodolfo Vega's Wage and Hour Claims Against Fondomonte California, LLC

Attn: Labor and Workforce Development Agency and Fondomonte California, LLC:

Please be advised that Rodolfo Vega ("Claimant") has retained our firm to represent him for various claims against his former employer Fondomonte California, LLC ("Fondomonte" or the "Company").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and to the Company of the alleged violations of the California Labor Code ("Labor Code") which Claimant claims that the Company committed against him and all other current and former non-exempt employees who performed work for the Company in the State of California.

Claimant provides this notice, which includes the facts and theories to support the Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2699.3. Claimant intends to file a civil action against the Company to enforce his rights under the Labor Code and seek civil penalties pursuant to the PAGA for the alleged violations of the Labor Code. Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent himself and all other current and former non-exempt employees who performed work for the Company and who have suffered at least one of the wage and hour violations described herein during the relevant time period (collectively, the "aggrieved employees").

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Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

FACTUAL BACKGROUND

The following factual background is based upon the limited investigation Claimant has been able to conduct to date. Claimant reserves the right to amend this notice letter should additional information come to light at a later date.

Fondomonte is a subsidiary of the Saudi Arabian company Almarai Co., one of the world's largest dairy companies. Fondomonte owns several thousand acres of land near Blythe, California where it grows hay and alfalfa for livestock at Almarai Co.'s dairy farms in Saudi Arabia. The Company also owns several thousand acres of land in Arizona, and several hundred acres of land in the Imperial Valley in California.

Claimant was employed by the Company in Blythe, California from approximately June 4, 2020 to December 12, 2020 as a concrete laborer in the Company's irrigation department. At all relevant times, Claimant was classified as a non-exempt employee and was compensated on an hourly basis. Claimant was paid at an hourly rate of \$15.00 per hour. During his employment, Claimant regularly worked shifts of ten (10) hours or more hours per day, up to six (6) days per week. Claimant regularly worked overtime hours and was entitled to overtime pay.

Claimant's property in Blythe, California is located directly next to the Colorado River. The river water is diverted and dispersed throughout the Company's property through a series of concrete canals and irrigation ditches. Claimant's job duties included performing concrete maintenance work on these canals and irrigation ditches which run throughout the Company's property. These were typically small concrete jobs, involving minor patchwork which required no more than one to two sacks of concrete mix. Claimant's duties were also not limited solely to concrete work. For example, Claimant's other duties included maintaining dirt slopes which surrounded the Company's crop fields, installing irrigation gates, installing drain pipes, installing check valves, cleaning irrigation ditches, maintaining weeds around the borders of the crop fields, painting, and transporting fertilizer and pesticide containers.

Claimant alleges that the Company denied Claimant and other aggrieved employees specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order. Specifically, the Company failed to provide Claimant and other aggrieved employees with legally compliant meal and/or rest periods or pay them meal and/or rest period premiums; failed to timely pay all minimum, regular, and overtime wages for all hours worked; failed to timely pay all wages due during and upon separation of employment; failed to reimburse for necessary business expenses; failed to issue accurate itemized wage statements; failed to maintain accurate records; and failed to provide Claimant with his personnel file upon request. Upon information and belief, all policies, practices, guidelines, and/or procedures of the Company applicable to Claimant were also applicable to all other aggrieved employees.

Failure to Provide Meal Periods and Rest Periods

Claimant asserts that the Company did not provide Claimant and other aggrieved employees with thirty-minute, off-duty meal periods commencing before the start of their sixth hour of work. Although Claimant signed an "In-Service Meal Break Agreement" ("On Duty Meal Agreement"), Claimant alleges

that the On Duty Meal Agreement is invalid and/or illegal for several reasons. For example, the duties identified in the On Duty Meal Agreement do not accurately describe Claimant's job duties. Additionally, Claimant regularly spent his day performing tasks which did not involve concrete work and/or did not prevent him from taking off-duty meal periods of at least 30-minutes before the commencement of his sixth hour of work. Claimant and other non-exempt employees were forced into entering into invalid on-duty meal agreements because their daily tasks did not make it "*virtually impossible*" for them to take off-duty meal periods. Nonetheless, the Company required Claimant and all other non-exempt employees to sign blanket waivers of off-duty meal breaks at the commencement and as a condition of their employment with the Company.

Finally, Claimant alleges that he missed off-duty meal periods because his supervisor would not allow him to take his meal breaks at an appropriate time prior to preparing the concrete mix. Instead, Claimant was required to work through the time he should take his meal break and have to take a late meal break at some other time, if possible, during the work day. Claimant's supervisors regularly would tell him not to take a timely meal break and to instead continue working.

As a result, Claimant and other aggrieved employees frequently took late lunch periods, and had to remain on-duty during their lunch periods even though the tasks being performed did not necessarily require them to remain on duty. Claimant alleges that nearly every day, there was an adequate time at which he could have taken a timely meal break, but he would be told to continue working and/or begin the concrete work instead, and have to take a late break, if he was able to take one at all.

Additionally, Claimant would typically be situated out among the Company's property and not anywhere near the central office or break room at the time he typically took a meal break. When he was on Company property, he drove a Company-owned vehicle around the property, and Claimant was ordered not to drive the vehicle back to the break room or drive the vehicle off the premises during his meal period. Claimant therefore was required to take his break wherever he was placed among the Company's property and to monitor the Company vehicle, and could not leave the premises or use a suitable break area. The Company therefore failed to provide Claimant and other aggrieved employees an opportunity to take timely, off-duty meal periods, in violation of California law. When Claimant worked shifts over ten hours, he was also not provided the opportunity to take a second thirty-minute, off-duty meal period.

For these same reasons, Claimant also alleges that the Company did not authorize and permit him or other aggrieved employees to take a legally-compliant, off-duty ten-minute rest period for every four (4) hours worked or major fraction thereof. When Claimant did have time to take a rest period, he had to remain on duty to monitor ongoing concrete work and make himself available to answer any work-related phone calls from his supervisors. Given that Claimant and other aggrieved employees frequently worked shifts of ten hours or longer, Claimant and other aggrieved employees were authorized to receive rest periods for every four (4) hours of work or major fraction thereof, but were denied the right to do so by the Company.

Claimant made several verbal complaints to the Company regarding his inability to take timely meal and/or rest periods. Thus, the Company knew or should have known that Claimant and other aggrieved employees were not provided with the opportunity to take legally-compliant meal periods

and/or rest periods. Despite this, the Company did not compensate Claimant and, on information and belief, other aggrieved employees an additional hour of pay at the employee's regular rate of pay for all work periods during which a meal or rest period was not provided, as required under California law. Thus, the Company owes Claimant and other aggrieved employees meal and rest period premium wages for each workday Claimant and other aggrieved employees were not provided with a compliant meal or rest period.

Failure to Pay Minimum, Regular, and Overtime Wages

Claimant and, on information and belief, other aggrieved employees were also not paid all minimum, regular, and/or overtime wages for all time spent working because the Company failed to pay them for all time they spent performing duties necessary to fulfill the requirements of their jobs. For example, on a typical day, Claimant would have to pass by a security booth prior to clocking in where he would have to stop and have his temperature checked before he could continue toward the main office. The guard at the security booth would also provide Claimant with the keys to the Company-owned vehicle Claimant would use to complete his duties that day. Once passing the security booth and entering the Company's main office building, Claimant would have to walk through a hallway to reach the employee break room where the Company had two separate time clocks for employees to use. One time clock was a biometric fingerprint scanner, while the other was a physical/analogue punch clock which provided an actual time stamp on a piece of paper. Claimant and other aggrieved employees were required to punch in on both clocks. Claimant and other aggrieved employees frequently had to wait in line behind other employees for several minutes before they were finally able to use each time clock. At the end of the day, Claimant would have to clock out in the same employee break room on the same time clocks, and then walk back outside to the security booth to turn in the keys to the vehicle after he was already off-the-clock. Only after the keys were returned to the security guard would Claimant finally be off duty, even though he had already clocked out for the day.

Claimant and other aggrieved employees were also not paid all minimum, regular, and overtime wages rightfully owed because Claimant and other aggrieved employees were required to work through meal periods even though employees were required to note that a thirty-minute meal period had been taken. Even though Claimant signed the On Duty Meal Agreement, he performed several tasks which did not require him to remain on duty during his meal periods, but he was still required to do so. Additionally, the Company has the practice of requiring Claimant and other aggrieved employees to carry their manual time card with them throughout the day so that the employees can hand-write their break times on their card. When a meal period was missed, late, short, or interrupted, the Company would still require Claimant to write in a fully compliant, thirty-minute meal break, even though one was not taken. As a result, Claimant was not paid all wages owed for time he actually spent working.

Failure to Provide Reimbursement

The Company also failed to reimburse Claimant and other aggrieved employees for all necessary expenses that were incurred in the discharge of their job duties. For example, the vehicle which Claimant frequently operated was equipped with a two-way radio so that he could communicate with supervisors and other personnel who remained back at the Company's main office area. The radio, however, was broken, and despite Claimant making the Company aware that the radio was not functioning, the

Company never fixed the radio or provided Claimant with a replacement. As a result, Claimant was required to use his personal cell phone instead of the vehicle's radio system. Claimant was never reimbursed for the necessary use of his personal cell phone in the discharge of his work duties.

Failure to Maintain Accurate Records and Provide Accurate Itemized Wage Statements

As a direct result of the Company's illegal policies and procedures outlined above, the Company failed to maintain accurate records reflecting all of Claimant's and other aggrieved employees' time worked and wages paid, in violation of California law. For example, the Company has the practice of having employees manually write in their meal break times. Despite frequently taking late or short meal breaks, or missing them altogether, Claimant was ordered by the Company to write in a fully compliant, thirty-minute meal break taken before the end of his fifth hour of work. The Company's time records therefore do not accurately reflect the time Claimant actually worked. Because of this, the wage statements issued by the Company did not include the correct number of hours worked, or the correct amount of gross and net wages earned. Due to the Company's failure to include accurate information on the issued wage statements, Claimant and other aggrieved employees were unable to promptly and easily determine the correct number of total hours worked or the correct amount of gross and net wages earned and owed during each pay period.

Failure to Timely Pay All Wages Due During and Upon Separation of Employment

Due to the foregoing allegations of Labor Code violations, the Company failed to timely pay Claimant and other aggrieved employees all wages due and payable during and upon separation of employment, including regular, minimum, and overtime wages for all hours worked, and meal and/or rest period premium wages.

Failure to Provide Employment Records

Upon his separation of employment, Claimant requested a copy of all his employment records and all documents he signed during his employment. Claimant was merely told that "it will take a while" to gather his records. Claimant did not receive his records within thirty days of his request, and in fact never received his records at all until the records were requested again by his retained counsel.

Due to the foregoing Labor Code violations, the Company denied Claimant and other aggrieved employees certain rights afforded to them under the California Labor Code and IWC Wage Orders. Claimant makes these claims against the Company on behalf of himself and all other current or former non-exempt employees of the Company in the state of California.

**FAILURE TO PROVIDE, AUTHORIZE, AND PERMIT COMPLIANT MEAL PERIODS
AND/OR REST PERIODS OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 226.7, 512, 558, 1198, and the "Meal Periods" and
"Rest Periods" sections of the applicable IWC Wage Order)

Labor Code § 226.7(b) states, "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation,

standard, or order of the Industrial Welfare Commission...” Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Labor Code § 512(a) states, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” and “[a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

The “Meal Periods” section of the applicable IWC Wage Order states, “[a]n employer may not employ an employee for a work period of more than five (5) hours without providing the employee with a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” It further provides that, “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.”

The “Meal Periods” section of the applicable IWC Wage Order also states, “[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to.”

The “Rest Periods” section of the applicable IWC Wage Order states, “[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. The authorized 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.”

Labor Code section 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

As set forth above, the Company failed to provide Claimant and other aggrieved employees with the opportunity to take uninterrupted, off-duty meal periods of at least thirty-minutes before the start of their sixth hour of work and did not authorize and permit Claimant and other aggrieved employees to take legally-compliant rest periods, as required by California law. Further, not all of Claimant’s duties were, by nature, tasks which prevented him from being relieved of all duty. The Company failed to pay Claimant and other aggrieved employees one hour of premium wages for each day a compliant meal period was not provided, and one hour of premium wages for each day a compliant rest period was not authorized or permitted. Claimant will pursue all remedies for the Company’s violations on behalf of himself and other aggrieved employees to the extent allowed by law.

FAILURE TO PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 204, 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the “Minimum Wages” and “Hours and Days of Work” sections of the applicable IWC Wage Order)

Labor Code § 204(a) states in pertinent part, “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Furthermore, Labor Code § 204(b)(1) states, “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.”

Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code § 1197.1 provides that, “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...” Labor Code § 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code § 510 states, “[e]ight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code § 1194(a) states, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code § 1194.2.

Labor Code section 223 states, “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Labor Code section 225.5 provides that “...every person who unlawfully withholds wages due any employee in violation of Section...223 shall be subject to a civil penalty” of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

The “Hours and Days of Work” section of the applicable IWC Wage Order states that, effective January 1, 2020, “an employee shall not be employed more than nine (9) hours per workday or fifty (50)

hours per workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek." The "Minimum Wages" section of the applicable IWC Wage Order states that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period..."

As set forth above, the Company failed to pay Claimant and other aggrieved employees all minimum, regular, and overtime wages, as required by law. The Company required Claimant and other aggrieved employees to perform necessary work-related tasks while off-the-clock, such as checking out and returning keys for Company-owned vehicles, and required Claimant and other aggrieved employees to work through rest periods without paying rest period premium wages. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

(Labor Code § 2802 and the "Uniforms and Equipment" section of the applicable IWC Wage Order)

Labor Code § 2802(a) provides in pertinent part, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Labor Code § 2802(b) states, "[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss." Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Consequently, Claimant will also request reimbursement of the attorney's fees and incurred in pursuing this matter.

The "Uniforms and Equipment" section of the applicable IWC Wage Order states 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..."

As set forth above, the Company required Claimant to communicate with supervisors and other employers who were not located in the same areas. The Company failed to provide Claimant with an adequate radio to communicate with the supervisors and other employees, despite his requests for one. As a result, Claimant was forced to use his personal cell phone, and was not reimbursed for doing so. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved employees to the extent allowed by law.

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FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 1174, 1174.5, 1198, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 1174 states, “[e]very person employing labor in this state shall... [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, ..., employees employed at the respective plants or establishments.”

The “Records” section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay. The “Records” section further states that “this information shall be made readily available to the employee upon reasonable request.”

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

As set forth above, the Company violated these requirements by failing to accurately record employee hours worked including, but not limited to, the Company’s failure to record the proper beginning and end of each work period, the correct beginning and end of each meal period, and the total hours worked during the pay period. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, 1198, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 226(a) states, in pertinent part, that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: “(1) gross wages earned, (2) total hours worked by the employee, ..., (5) net wages earned, ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

Labor Code § 226(e) imposes a penalty of 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 exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and reasonable attorney’s fees. Labor Code § 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code § 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

As set forth above, the Company failed to provide Claimant and other aggrieved employees with accurate itemized wage statements that comply with the requirements of the Labor Code, because the

wage statements issued did not include the correct total regular hours worked, the correct amount of gross and net wages earned, the correct amount of overtime hours worked, and all applicable hourly rates and the corresponding number of hours worked at each hourly rate. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES DUE

(Labor Code §§ 201, 202, 203, 204, 210, 1194, 1194.2, 1198, and the "Minimum Wages" section of the applicable IWC Wage Order)

Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202 provides, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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."

Labor Code § 203(a) further provides, "[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days."

Labor Code § 204(a) states in pertinent part, "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Furthermore, Labor Code § 204(b)(1) states, "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."

Labor Code § 210 mandates that, "... every person who fails to pay the wages of an employee as provided in Sections 201.3...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

The "Minimum Wages" section of the applicable IWC Wage Order also states that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

As set forth above, the Company failed to pay Claimant and other aggrieved employees all minimum, regular, and overtime wages owed, as well as rest period premium wages owed, within the required time during and upon separation of their employment. For the same reasons, the Company further did not pay Claimant and, on information and belief, other aggrieved employees, all wages owed upon separation of employment. As a result of the Company's intentional failure to comply with the aforementioned Labor Code provisions, the Company owes Claimant and other aggrieved employees

waiting time penalties. Claimant will pursue all available remedies for these alleged violation on behalf of himself and all other aggrieved employees to the extent allowed by law.

FAILURE TO PROVIDE EMPLOYMENT FILE

(Labor Code §§ 432, 1198.5, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 1198.5(a) provides that “[e]very current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Labor Code § 1198.5(b)(1) goes on to state that “[t]he employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request...”

Labor Code § 1198.5(k) states that “[i]f an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section...the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.”

The “Records” section of the applicable IWC Wage Order states that employee records “shall be made readily available to the employee upon reasonable request.”

As addressed above, Claimant made a request for his employment file, in writing, and never received the requested information. Claimant is therefore entitled to recover a penalty pursuant to Labor Code § 1198.5(k).

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. 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 558.1(a) states that “[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Section 558.1(b) goes on to state that “...the term ‘other person acting on behalf of an employer’ is limited to a natural person who is an owner, director, officer, or managing agent of the employer...”

Similarly, Labor Code § 1197.1 states that “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.”

As set forth above, the Company underpaid Claimant and aggrieved employees and violated the Labor Code and the applicable IWC Wage Order by failing to pay all regular, minimum, and overtime wages, rest period premium wages, and business expense reimbursements, as required under labor code sections 203, 226, 226.7, 510, 512, 1194, 1197, and 2802, and the relevant sections of the applicable IWC Wage Order. As a result, the Company is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

ATTORNEY’S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 2802, and 2698, *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5, 2802, and 2698, *et seq.*, among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney’s fees and costs.

Under Labor Code § 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorneys’ fees and costs. Claimant has already incurred actual damages, costs and attorney’s fees and he will continue to incur such costs as a result of the Company’s unlawful actions. Claimant will pursue all available remedies including, but not limited to, those provided by the PAGA, on behalf of himself and other aggrieved employees to the extent permitted by law for the violations of law described herein and those later discovered.

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CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, additional compensation owed, and/or other violations to him or any other aggrieved employee of the Company, he reserves the right to revise these facts and/or add any new claims by amending this claim letter or by adding applicable causes of action in his complaint.

Sincerely,

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

Alex Kuner



March 27, 2021

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9414 8118 9876 5898 1380 44.

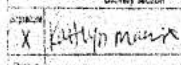
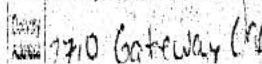
Item Details

Status:	Delivered
Status Date / Time:	March 25, 2021, 10:44 am
Location:	SACRAMENTO, CA 95813
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic
Recipient Name:	California LLC

Shipment Details

Weight:	3.0oz
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Reference	34960-00001 VEGA FONDOMONTE AG
USPS #	9414811898765898138044
USPS Mail Class	Certified with Return Receipt (Signature)
USPS Status	Your item was delivered at 10:44 am on March 25, 2021 in SACRAMENTO, CA 95813.
USPS History	Out for Delivery, 03/25/2021, 10:20 am, SACRAMENTO, CA 95833 Arrived at Post Office, 03/25/2021, 10:09 am, SACRAMENTO, CA 95813 Departed USPS Regional Destination Facility, 03/24/2021, 12:39 pm, SACRAMENTO CA DISTRIBUTION CENTER Arrived at USPS Regional Destination Facility, 03/24/2021, 12:04 pm, SACRAMENTO CA DISTRIBUTION CENTER In Transit to Next Facility, 03/23/2021 Arrived at USPS Regional Origin Facility, 03/22/2021, 9:22 pm, SAN DIEGO CA DISTRIBUTION CENTER Accepted at USPS Origin Facility, March 22, 2021, 8:07 pm, SAN DIEGO, CA 92103 Shipping Label Created, USPS Awaiting Item, March 22, 2021, 5:46 pm, SAN DIEGO, CA 92103

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March 27, 2021

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Status Date / Time:	March 26, 2021, 10:28 am
Location:	GOODYEAR, AZ 85338
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic
Recipient Name:	LLC

Shipment Details

Weight:	3.0oz
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USPS Mail Class	Certified with Return Receipt (Signature)
USPS Status	Your item was delivered to the front desk, reception area, or mail room at 10:28 am on March 26, 2021 in GOODYEAR, AZ 85338.
USPS History	Departed USPS Regional Destination Facility, 03/25/2021, 5:01 pm, PHOENIX AZ DISTRIBUTION CENTER ANNEX Arrived at USPS Regional Destination Facility, 03/25/2021, 12:52 pm, PHOENIX AZ DISTRIBUTION CENTER ANNEX In Transit to Next Facility, 03/24/2021 In Transit to Next Facility, 03/23/2021 Arrived at USPS Regional Origin Facility, 03/22/2021, 9:22 pm, SAN DIEGO CA DISTRIBUTION CENTER Accepted at USPS Origin Facility, March 22, 2021, 8:07 pm, SAN DIEGO, CA 92103 Shipping Label Created, USPS Awaiting Item, March 22, 2021, 5:44 pm, SAN DIEGO, CA 92103

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