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ALAMEDA COUNTY

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THE SUPERIOR COURT
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CASE NUMBER:

RG21095686

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

11 ANA ZAMORANO AGUILAR individually, and
on behalf of all others similarly situated,

12 Plaintiff,

14 vs.

15 DAYLIGHT FOODS, INC., a California
16 corporation; and DOES 1 through 10, inclusive,

17 Defendants.

Case No.: RG21095686

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

1. Failure to Pay Minimum and Regular Rate Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197];
2. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
3. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512];
4. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7];
5. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
6. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and
7. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.];
8. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

DEMAND FOR JURY TRIAL

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1 Plaintiff Ana Zamorano Aguilar, also known as Ana Martinez, (“Plaintiff”), based
2 upon facts that either have evidentiary support or are likely to have evidentiary support after a
3 reasonable opportunity for further investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Daylight Foods, Inc. and Does 1
6 through 10 (collectively referred to as “Defendants”) for California Labor Code violations and
7 unfair business practices stemming from Defendants’ failure to pay minimum and regular rate
8 wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and
9 permit rest periods, failure to maintain accurate records of hours worked and meal periods,
10 failure to timely pay all wages to terminated employees, and failure to furnish accurate wage
11 statements.

12 2. Plaintiff brings the First through Seventh Causes of Action individually and as a class
13 action on behalf of herself and certain current and former employees of Defendants (hereinafter
14 collectively referred to as the “Class” or “Class Members” and defined more fully below).The
15 Class consists of Plaintiff and all other persons who have been employed by any Defendant in
16 California and classified as a non-exempt employee during the statute of limitations period
17 applicable to the claims pleaded here.

18 3. Plaintiff brings the Eight Cause of Action as a representative action under the
19 California Private Attorney General Act (“PAGA”) to recover civil penalties that are owed to
20 Plaintiff, the State of California, and past and present employees of Defendants (hereinafter
21 referred to as the “Aggrieved Employees”).

22 4. Defendants own/owned and operate/operated an industry, business, and establishment
23 within the State of California, including Alameda County. As such, and based upon all the facts
24 and circumstances incident to Defendants’ business in California, Defendants are subject to the
25 California Labor Code, Wage Orders issued by the Industrial Welfare Commission (“IWC”), and
26 the California Business & Professions Code.

27 5. Despite these requirements, throughout the statutory period Defendants maintained a
28 systematic, company-wide policy and practice of:

- 1 (a) Failing to pay employees for all hours worked, including all minimum
2 wages, overtime wages, in compliance with the California Labor Code and
3 IWC Wage Orders;
- 4 (b) Failing to maintain accurate records of the hours employees worked;
- 5 (c) Failing to provide employees with timely and duty-free meal periods in
6 compliance with the California Labor Code and IWC Wage Orders, failing
7 to maintain accurate records of all meal periods taken or missed, and
8 failing to pay an additional hour's pay for each workday a meal period
9 violation occurred;
- 10 (d) Failing to authorize and permit employees to take timely and duty-free rest
11 periods in compliance with the California Labor Code and IWC Wage
12 Orders, and failing to pay an additional hour's pay for each workday a rest
13 period violation occurred;
- 14 (e) Willfully failing to pay employees all minimum wages, overtime wages,
15 meal period premium wages, and rest period premium wages due within
16 the time period specified by California law when employment terminates;
17 and
- 18 (f) Failing to provide employees with accurate, itemized wage statements
19 containing all the information required by the California Labor Code and
20 IWC Wage Orders.

21 6. On information and belief, Defendants, and each of them were on actual and
22 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
23 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
24 willful and deliberate.

25 7. At all relevant times, Defendants were and are legally responsible for all of the
26 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
27 foregoing paragraphs as the employer of Plaintiff and the Class. Further, Defendants are
28 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of

“respondeat superior”.

THE PARTIES

A. Plaintiff

8. Plaintiff is a California resident who worked for Defendants in Alameda County, California as a packer from approximately June 2019 to January 2021.

9. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant Daylight Foods, Inc. is:

- (a) A California corporation with its principal place of business in Alameda, California.
- (b) A business entity conducting business in numerous counties throughout the State of California, including in Alameda County; and
- (c) The former employer of Plaintiff, and the current and/or former employer of the putative Class. Daylight Foods, Inc. suffered and permitted Plaintiff and the Class to work, and/or controlled their wages, hours, or working conditions.

11. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and the Class as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff and the Class in the State of California.

1 13. Plaintiff is informed and believes and thereon alleges that at all relevant times each
2 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the
3 other employees described in the class definitions below, and exercised control over their wages,
4 hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all
5 relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director,
6 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
7 predecessor in interest of some or all of the other Defendants, and was engaged with some or all
8 of the other Defendants in a joint enterprise for profit, and bore such other relationships to some
9 or all of the other Defendants so as to be liable for their conduct with respect to the matters
10 alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted
11 pursuant to and within the scope of the relationships alleged above, that each Defendant knew or
12 should have known about, and authorized, ratified, adopted, approved, controlled, aided and
13 abetted the conduct of all other Defendants.

14 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

15 14. Plaintiff Ana Zamorano Aguilar, also known as Ana Martinez, worked for Defendants
16 in Alameda County, California as a packer from approximately June 2019 to January 2021. At all
17 times Defendants classified Plaintiff as non-exempt from California's overtime requirements.
18 During the statutory time period, Plaintiff was typically scheduled to work 5 days in a workweek,
19 and typically in excess of 8 hours in a single workday.

20 15. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
21 worked (including minimum wages and overtime compensation), failed to provide Plaintiff with
22 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
23 periods, failed to maintain accurate records of the hours Plaintiff worked, failed to timely pay all
24 final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish
25 accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for
26 Defendants was typical and illustrative.

27 16. Throughout the statutory period, Defendants maintained a policy and practice of not
28 paying Plaintiff and the Class for all hours worked, including all overtime wages. Plaintiff and

1 the Class were typically required to work “off the clock”. For example, Plaintiff and the Class
2 were required to wait in line in order to clock into work each workday, both at the beginning of
3 the workday and when returning from meal periods, uncompensated. Also at the beginning of
4 each workday, and before clocking into work in the morning, Plaintiff and the Class were also
5 required to undergo a COVID temperature check (including standing in a line to get the
6 screening), and were then required to go to the locker room to leave their personal items, all prior
7 to clocking into work each workday. As a result, Defendants frequently paid Plaintiff and the
8 Class less than all their work time, some of which should have been paid at the overtime rate. As
9 a further result, Defendants failed to maintain accurate records of the hours Plaintiff and the
10 Class worked.

11 17. Throughout the statutory period, Defendants have wrongfully failed to provide
12 Plaintiff and the Class with legally compliant meal periods. Defendants regularly, but not
13 always, required Plaintiff and the Class to work in excess of five consecutive hours a day without
14 providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours
15 of work, or without compensating Plaintiff and the Class for meal periods that were not provided
16 by the end of the fifth hour of work or tenth hour of work. Defendants did not adequately inform
17 Plaintiff and the Class of their right to take a meal period by the end of the fifth hour of work, or,
18 for shifts greater than 10 hours, by the end of the tenth hour of work. Defendants also did not
19 have adequate policies or practices to document and verify whether Plaintiff and the Class were
20 taking their required meal periods. Accordingly, Defendants’ policy and practice was to not
21 provide meal periods to Plaintiff and the Class in compliance with California law.

22 18. Throughout the statutory period, Defendants have wrongfully failed to authorize and
23 permit Plaintiff and the Class to take timely and duty-free rest periods. Defendants regularly, but
24 not always, required Plaintiff and the Class to work in excess of four consecutive hours a day
25 without Defendants authorizing and permitting them to take a 10-minute, continuous and
26 uninterrupted, rest period for every four hours of work (or major fraction of four hours), or
27 without compensating Plaintiff and the Class for rest periods that were not authorized or
28 permitted. Further, Plaintiff and the Class were not authorized to take a third rest period in those

1 instances where they worked in excess of 10 hours per workday. Accordingly, Defendants'
2 policy and practice was to not authorize and permit Plaintiff and the Class to take rest periods in
3 compliance with California law.

4 19. Throughout the statutory period, Defendants willfully failed and refused to timely pay
5 Plaintiff and the Class at the conclusion of their employment all wages, including overtime
6 wages, meal period premium wages, and rest period premium wages.

7 20. Throughout the statutory period, Defendants failed to provide adequate and suitable
8 seating to its employees, despite the fact that seating was possible for its employees throughout
9 the workday.

10 21. Throughout the statutory period, Defendants failed to furnish Plaintiff and the Class
11 with accurate, itemized wage statements showing all applicable hourly rates, and all gross and
12 net wages earned (including correct hours worked, correct wages earned for hours worked,
13 correct overtime hours worked, correct wages for meal periods that were not provided in
14 accordance with California law, and correct wages for rest periods that were not authorized and
15 permitted to take in accordance with California law). As a result of these violations of California
16 Labor Code § 226(a), Plaintiff and the Class suffered injury because, among other things:

- 17 (a) the violations led them to believe that they were not entitled to be paid
18 minimum wages, overtime wages, meal period premium wages, and rest
19 period premium wages to which they were entitled, even though they were
20 entitled;
- 21 (b) the violations led them to believe that they had been paid the minimum,
22 overtime, meal period premium, and rest period premium wages to which
23 they were entitled, even though they had not been;
- 24 (c) the violations led them to believe they were not entitled to be paid
25 minimum, overtime, meal period premium, and rest period premium wages
26 at the correct California rate even though they were;
- 27 (d) the violations led them to believe they had been paid minimum, overtime,
28 meal period premium, and rest period premium wages at the correct

California rate even though they had not been;

- (e) the violations hindered them from determining the amounts of minimum, overtime, meal period premium, and rest period premium owed to them;
- (f) in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information;
- (g) by understating the wages truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;
- (h) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff and the Class were entitled, and Plaintiff and the Class were paid less than the wages and wage rates to which they were entitled.

Thus, Plaintiff and the Class are owed the amounts provided for in California Labor Code § 226(e).

CLASS ACTION ALLEGATIONS

22. Plaintiff brings certain claims individually, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure § 382.

23. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

24. The proposed Class consists of and is defined as:

All persons who worked for any Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint in this action and ending when notice to the Class is sent.

25. At all material times, Plaintiff was a member of the Class.

1 26. Plaintiff undertakes this concerted activity to improve the wages and working
2 conditions of all Class Members.

3 27. There is a well-defined community of interest in the litigation and the Class is readily
4 ascertainable:

5 (a) Numerosity: The members of the Class (and each subclass, if any) are so
6 numerous that joinder of all members would be unfeasible and impractical.
7 The membership of the entire Class is unknown to Plaintiff at this time,
8 however, the Class is estimated to be greater than 100 individuals and the
9 identity of such membership is readily ascertainable by inspection of
10 Defendants' records.

11 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
12 the interests of each Class Member with whom there is a shared, well-
13 defined community of interest, and Plaintiff's claims (or defenses, if any)
14 are typical of all Class Members' claims as demonstrated herein.

15 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
16 the interests of each Class Member with whom there is a shared, well-
17 defined community of interest and typicality of claims, as demonstrated
18 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
19 Member. Plaintiff's attorneys, the proposed class counsel, are versed in
20 the rules governing class action discovery, certification, and settlement.
21 Plaintiff has incurred, and throughout the duration of this action, will
22 continue to incur costs and attorneys' fees that have been, are, and will be
23 necessarily expended for the prosecution of this action for the substantial
24 benefit of each class member.

25 (d) Superiority: A Class Action is superior to other available methods for the
26 fair and efficient adjudication of the controversy, including consideration
27 of:

28 1) The interests of the members of the Class in individually

controlling the prosecution or defense of separate actions;

- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- 4) The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the California Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

28. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, Defendants have:

- (a) Failed to pay Class Members for all hours worked, including minimum wages, and overtime wages;
- (b) Failed to provide meal periods and pay meal period premium wages to Class Members;
- (c) Failed to authorize and permit rest periods and pay rest period premium wages to Class Members;
- (d) Failed to promptly pay all wages due to Class Members upon their discharge or resignation;

- (e) Failed to provide Class Members with accurate wages statements;
- (f) Failed to maintain accurate records of all hours Class Members worked, and all meal periods Class Members took or missed; and
- (g) Violated California Business & Professions Code §§ 17200 *et. seq.* as a result of their illegal conduct as described above.

29. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

- (a) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- (c) The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;
- (d) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;
- (f) Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:
 - 1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or
 - 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other

members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,

(g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

30. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff would contemplate the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

(Against all Defendants for Failure to Pay Minimum Wages for All Hours Worked)

31. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 in this First Amended Complaint.

32. "Hours worked" is 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.

33. At all relevant times herein mentioned, Defendants knowingly failed to pay to Plaintiff and the Class compensation for all hours they worked. By their failure to pay compensation for each hour worked as alleged above, Defendants willfully violated the provisions of Section 1194 of the California Labor Code, and any additional applicable Wage Orders, which require such compensation to non-exempt employees.

34. Accordingly, Plaintiff and the Class are entitled to recover minimum wages for all non-overtime hours worked for Defendants.

1 35. By and through the conduct described above, Plaintiff and the Class have been
2 deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

3 36. By virtue of the Defendants' unlawful failure to pay additional compensation to
4 Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class
5 suffered, and will continue to suffer, damages in amounts which are presently unknown to
6 Plaintiff and the Class, but which exceed the jurisdictional minimum of this Court, and which
7 will be ascertained according to proof at trial.

8 37. By failing to keep adequate time records required by California Labor Code §
9 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage
10 compensation due Plaintiff and the Class.

11 38. Pursuant to California Labor Code section 1194.2, Plaintiff and the Class are entitled
12 to recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

13 39. California Labor Code section 204 requires employers to provide employees with all
14 wages due and payable twice a month. Throughout the statute of limitations period applicable to
15 this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates
16 required by law, including minimum wages. However, during all such times, Defendants
17 systematically failed and refused to pay Plaintiff and the Class all such wages due, and failed to
18 pay those wages twice a month.

19 40. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum
20 wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§
21 218.5, 218.6, and 1194(a).

22 **SECOND CAUSE OF ACTION**

23 **(Against all Defendants for Failure to Pay Overtime Wages)**

24 41. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1
25 through 21 in this First Amended Complaint.

26 42. California Labor Code § 510 provides that employees in California shall not be
27 employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless
28 they receive additional compensation beyond their regular wages in amounts specified by law.

1 43. California Labor Code §§ 1194 and 1198 provide that employees in California shall
2 not be employed more than eight hours in any workday unless they receive additional
3 compensation beyond their regular wages in amounts specified by law. Additionally, California
4 Labor Code § 1198 states that the employment of an employee for longer hours than those fixed
5 by the Industrial Welfare Commission is unlawful.

6 44. At all times relevant hereto, Plaintiff and the Class have worked more than eight hours
7 in a workday, as employees of Defendants.

8 45. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class overtime
9 compensation for the hours they have worked in excess of the maximum hours permissible by
10 law as required by California Labor Code § 510 and 1198. Plaintiff and the Class are regularly
11 required to work overtime hours.

12 46. By virtue of Defendants' unlawful failure to pay additional premium rate
13 compensation to the Plaintiff and the Class for their overtime hours worked, Plaintiff and the
14 Class have suffered, and will continue to suffer, damages in amounts which are presently
15 unknown to them but which exceed the jurisdictional minimum of this Court and which will be
16 ascertained according to proof at trial.

17 47. By failing to keep adequate time records required by Labor Code § 1174(d),
18 Defendants have made it difficult to calculate the full extent of overtime compensation due to
19 Plaintiff and the Class.

20 48. Plaintiff and the Class also request recovery of overtime compensation according to
21 proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well as
22 the assessment of any statutory penalties against Defendants, in a sum as provided by the
23 California Labor Code and/or other statutes.

24 49. California Labor Code § 204 requires employers to provide employees with all wages
25 due and payable twice a month. The Wage Orders also provide that every employer shall pay to
26 each employee, on the established payday for the period involved, overtime wages for all
27 overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class
28 with all compensation due, in violation of California Labor Code § 204.

1 **THIRD CAUSE OF ACTION**

2 **(Against All Defendants for Failure to Provide Meal Periods)**

3 50. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1
4 through 21 in this First Amended Complaint.

5 51. Under California law, Defendants have an affirmative obligation to relieve the
6 Plaintiff and the Class of all duty in order to take their first daily meal periods no later than the
7 start of Plaintiff and the Class' sixth hour of work in a workday, and to take their second meal
8 periods no later than the start of the eleventh hour of work in the workday. Section 512 of the
9 California Labor Code, and Section 11 of the applicable Wage Orders require that an employer
10 provide unpaid meal periods of at least 30 minutes for each five-hour period worked. It is a
11 violation of Section 226.7 of the California Labor Code for an employer to require any employee
12 to work during any meal period mandated under any Wage Order.

13 52. Despite these legal requirements, Defendants regularly failed to provide Plaintiff and
14 the Class with both meal periods as required by California law. By their failure to permit and
15 authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the fact that
16 Defendants made it impossible or impracticable to take these uninterrupted meal periods),
17 Defendants willfully violated the provisions of Section 226.7 of the California Labor Code and
18 the applicable Wage Orders.

19 53. Under California law, Plaintiff and the Class are entitled to be paid one hour of
20 additional wages for each workday he or she was not provided with all required meal period(s),
21 plus interest thereon.

22 **FOURTH CAUSE OF ACTION**

23 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

24 54. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1
25 through 21 in this First Amended Complaint.

26 55. Defendants are required by California law to authorize and permit breaks of 10
27 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
28 two hours). Section 512 of the California Labor Code, the applicable Wage Orders require that

1 the employer permit and authorize all employees to take paid rest periods of 10 minutes each for
2 each 4-hour period worked. Thus, for example, if an employee's work time is 6 hours and ten
3 minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so
4 required is itself a violation of California's rest break laws. It is a violation of Section 226.7 of
5 the California Labor Code for an employer to require any employee to work during any rest
6 period mandated under any Wage Order.

7 56. Despite these legal requirements, Defendants failed to authorize Plaintiff and the
8 Class to take rest breaks, regardless of whether employees worked more than 4 hours in a
9 workday. By their failure to permit and authorize Plaintiff and the Class to take rest periods as
10 alleged above (or due to the fact that Defendants made it impossible or impracticable to take
11 these uninterrupted rest periods), Defendants willfully violated the provisions of Section 226.7 of
12 the California Labor Code and the applicable Wage Orders.

13 57. Under California law, Plaintiff and the Class are entitled to be paid one hour of
14 premium wages rate for each workday he or she was not provided with all required rest break(s),
15 plus interest thereon.

16 **FIFTH CAUSE OF ACTION**

17 **(Against all Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time** 18 **Penalties)**

19 58. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1
20 through 21 in this First Amended Complaint.

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

27 60. Within the applicable statute of limitations, the employment of Plaintiff and many
28 other members of the Class ended, i.e. was terminated by quitting or discharge, and the

1 employment of others will be. However, during the relevant time period, Defendants failed, and
2 continue to fail to pay terminated Class Members, without abatement, all wages required to be
3 paid by California Labor Code sections 201 and 202 either at the time of discharge, or within
4 seventy-two (72) hours of their leaving Defendants' employ.

5 61. Defendants' failure to pay Plaintiff and those Class members who are no longer
6 employed by Defendants their wages earned and unpaid at the time of discharge, or within
7 seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor
8 Code §§ 201 and 202.

9 62. California Labor Code § 203 provides that if an employer willfully fails to pay wages
10 owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as
11 a penalty wage from the due date, and at the same rate until paid or until an action is
12 commenced; but the wages shall not continue for more than thirty (30) days

13 63. Plaintiff and the Class are entitled to recover from Defendants their additionally
14 accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days
15 maximum pursuant to California Labor Code § 203.

16 64. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, Plaintiff and the Class
17 are also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred
18 in this action.

19 **SIXTH CAUSE OF ACTION**

20 **(Against all Defendants for Failure to Provide and Maintain Accurate and** 21 **Compliant Wage Records)**

22 65. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1
23 through 21 in this First Amended Complaint.

24 66. At all material times set forth herein, California Labor Code § 226(a) provides that
25 every employer shall furnish each of his or her employees an accurate itemized wage statement
26 in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours
27 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate
28 if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made

1 on written orders of the employee may be aggregated and shown as one item, (5) net wages
2 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
3 employee and the last four digits of his or her social security number or an employee
4 identification number other than a social security number, (8) the name and address of the legal
5 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
6 the corresponding number of hours worked at each hourly rate by the employee.

7 67. Defendants have intentionally and willfully failed to provide employees with
8 complete and accurate wage statements. The deficiencies include, among other things, the
9 failure to correctly identify the gross wages earned by Plaintiff and the Class, the failure to list
10 the true “total hours worked by the employee,” and the failure to list the true net wages earned.

11 68. As a result of Defendants’ violation of California Labor Code § 226(a), Plaintiff and
12 the Class have suffered injury and damage to their statutorily-protected rights.

13 69. Specifically, Plaintiff and the members of the Class have been injured by Defendants’
14 intentional violation of California Labor Code § 226(a) because they were denied both their legal
15 right to receive, and their protected interest in receiving, accurate, itemized wage statements
16 under California Labor Code § 226(a).

17 70. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and
18 time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as
19 a result of having to bring this action to attempt to obtain correct wage information following
20 Defendants’ refusal to comply with many of the mandates of California’s Labor Code and related
21 laws and regulations.

22 71. Plaintiff and the Class are entitled to recover from Defendants the greater of their
23 actual damages caused by Defendants’ failure to comply with California Labor Code § 226(a), or
24 an aggregate penalty not exceeding four thousand dollars per employee.

25 72. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of
26 attorney’s fees and costs to ensure compliance with this section, pursuant to California Labor
27 Code § 226(h).
28

1 **SEVENTH CAUSE OF ACTION**

2 **(Against all Defendants for Violation of California Business & Professions Code §§ 17200,**
3 **et seq.)**

4 73. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1
5 through 21 in this First Amended Complaint.

6 74. Defendants, and each of them, are “persons” as defined under California Business &
7 Professions Code § 17201.

8 75. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
9 unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seek
10 to enforce important rights affecting the public interest within the meaning of Code of Civil
11 Procedure § 1021.5.

12 76. Defendants’ activities, as alleged herein, are violations of California law, and
13 constitute unlawful business acts and practices in violation of California Business & Professions
14 Code §§ 17200, *et seq.*

15 77. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
16 predicated on the violation of any state or federal law. All of the acts described herein as
17 violations of, among other things, the California Labor Code, are unlawful and in violation of
18 public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous,
19 and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of
20 California Business & Professions Code §§ 17200, *et seq.*

21 **Failure to Pay Minimum Wages**

22 78. Defendants’ failure to pay minimum wages, and other benefits in violation of the
23 California Labor Code constitutes unlawful and/or unfair activity prohibited by California
24 Business & Professions Code §§ 17200, *et seq.*

25 **Failure to Pay Overtime Wages**

26 79. Defendants’ failure to pay overtime compensation and other benefits in violation of
27 California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity
28 prohibited by California Business & Professions Code §§ 17200, *et seq.*

1 **Failure to Maintain Accurate Records of All Hours Worked**

2 80. Defendants' failure to maintain accurate records of all hours worked in accordance
3 with California Labor Code § 1174.5 and the IWC Wage Orders constitutes unlawful and/or
4 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

5 **Failure to Provide Meal Periods**

6 81. Defendants' failure to provide meal periods in accordance with California Labor Code
7 §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or
8 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

9 **Failure to Maintain Accurate Records of Meal Periods**

10 82. Defendants' failure to maintain accurate records of employee meal periods in
11 accordance with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above,
12 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code
13 §§ 17200, *et seq.*

14 **Failure to Authorize and Permit Rest Periods**

15 83. Defendants' failure to authorize and permit rest periods in accordance with California
16 Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or
17 unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

18 **Failure to Provide Accurate Itemized Wage Statements**

19 84. Defendants' failure to provide accurate itemized wage statements in accordance with
20 California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity
21 prohibited by California Business & Professions Code §§ 17200, *et seq.*

22 85. By and through their unfair, unlawful and/or fraudulent business practices described
23 herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and
24 all persons similarly situated, and have deprived Plaintiff, and all persons similarly situated, of
25 valuable rights and benefits guaranteed by law, all to their detriment.

26 86. Plaintiff and the Class Members suffered monetary injury as a direct result of
27 Defendants' wrongful conduct.

28 87. Plaintiff, individually, and on behalf of members of the putative Class, are entitled to,

1 and do, seek such relief as may be necessary to disgorge money and/or property which the
2 Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by
3 means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and
4 the Class are not obligated to establish individual knowledge of the wrongful practices of
5 Defendants in order to recover restitution.

6 88. Plaintiff, individually, and on behalf of members of the putative class, are further
7 entitled to and do seek a declaration that the above described business practices are unfair,
8 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,
9 from engaging in any of the above-described unfair, unlawful and/or fraudulent business
10 practices in the future.

11 89. Plaintiff, individually, and on behalf of members of the putative class, have no plain,
12 speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered
13 as a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a
14 result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff,
15 individually, and on behalf of members of the putative Class, suffered and will continue to suffer
16 irreparable harm unless the Defendants, and each of them, are restrained from continuing to
17 engage in said unfair, unlawful and/or fraudulent business practices.

18 90. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth
19 herein above, they will continue to avoid paying the appropriate taxes, insurance and other
20 withholdings.

21 91. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff and
22 putative Class Members are entitled to restitution of the wages withheld and retained by
23 Defendants during a period that commences four years prior to the filing of this complaint; a
24 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
25 Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure §
26 1021.5 and other applicable laws; and an award of costs.

27 ///

28 ///

1 **EIGHT CAUSE OF ACTION**

2 (Against all Defendants for Civil Penalties Under the Private Attorneys General Act of 2004,
3 Cal. Lab. Code § 2698 et seq.)

4 92. Plaintiff incorporate by reference and re-allege as if fully stated herein paragraphs 1
5 through 21 in this First Amended Complaint.

6 93. At all times herein mentioned, Defendants were subject to the Labor Code of the State
7 of California and the applicable Industrial Welfare Commission Orders. California Labor Code §
8 2699(a) specifically provides for a private right of action to recover penalties for violations of the
9 Labor Code: “Notwithstanding any other provision of law, any provision of this code that
10 provides for a civil penalty to be assessed and collected by the Labor and Workforce
11 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
12 employees, for a violation of this code, may, as an alternative, be recovered through a civil action
13 brought by an aggrieved employee on behalf of himself or herself and other current or former
14 employees pursuant to the procedures specified in Section 2699.3.”

15 94. Plaintiff has exhausted his administrative remedies pursuant to California Labor
16 Code § 2699.3. On April 14, 2021 Plaintiff gave written notice by online filing to the Labor and
17 Workforce Development Agency and by certified mail to Defendants of the specific provisions
18 of the Labor Code that Defendants have violated against Plaintiff and current and former
19 aggrieved employees, including the facts and theories to support the violations. At the time of
20 this filing, 65 days has elapsed since Plaintiff provided notice, but the Labor and Workforce
21 Development Agency has not indicated that it intends to investigate Defendants’ Labor Code
22 violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover
23 penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code
24 described in this Complaint. These penalties include, but are not limited to, penalties under
25 California Labor Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

26 95. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
27 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
28 employing labor who willfully fails to maintain accurate and complete records required by

1 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
2 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
3 begins and ends each work period. Meal periods, and total hours worked daily shall also be
4 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
5 keep total hours worked in the payroll period and applicable rates of pay.

6 96. During the time period of employment for Plaintiff and the Aggrieved Employees,
7 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
8 maintain accurate records showing meal periods, and accurate records showing when employees
9 begin and end each work period. Defendants' failure to provide and maintain records required by
10 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
11 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
12 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
13 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
14 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
15 Employees have suffered and continue to suffer, substantial losses related to the use and
16 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
17 to compel Defendants to fully perform its obligation under state law, all to their respective
18 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
19 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
20 Employees have also suffered an injury in that they were prevented from knowing,
21 understanding, and disputing the wage payments paid to them.

22 97. Based on the conduct described in this First Amended Complaint, Plaintiff is
23 entitled to an award of civil penalties on behalf of himself, the State of California, and similarly
24 Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in
25 an amount to be shown according to proof at trial. These penalties are in addition to all other
26 remedies permitted by law.

27 98. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
28 pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in

any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated only with respect to the class claims, pray for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action with respect to the First, Second, Third, Fourth, Fifth, Sixth, and Eighth Causes of Action;
2. That Plaintiff be appointed as the representative of the Class; and
3. That counsel for Plaintiff be appointed as Class Counsel.

As to the First Cause of Action

4. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum wages due;
5. For general unpaid wages as may be appropriate;
6. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
7. For liquidated damages;
8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,
9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due;
11. For general unpaid wages at overtime wage rates as may be appropriate;
12. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

1 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
2 California Labor Code § 1194(a); and,

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

4 As to the Third Cause of Action

5 15. That the Court declare, adjudge and decree that Defendants violated California
6 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

7 16. For unpaid meal period premium wages as may be appropriate;

8 17. For pre-judgment interest on any unpaid compensation commencing from the date
9 such amounts were due;

10 18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
11 and for costs of suit incurred herein; and

12 19. For such other and further relief as the Court may deem equitable and appropriate.

13 As to the Fourth Cause of Action

14 20. That the Court declare, adjudge and decree that Defendants violated California
15 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

16 21. For unpaid rest period premium wages as may be appropriate;

17 22. For pre-judgment interest on any unpaid compensation commencing from the date
18 such amounts were due;

19 23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
20 and for costs of suit incurred herein; and

21 24. For such other and further relief as the Court may deem equitable and appropriate.

22 As to the Fifth Cause of Action

23 25. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
25 termination of the employment;

26 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
27 employees who have left Defendants' employ;

28 27. For pre-judgment interest on any unpaid wages from the date such amounts were

1 due;

2 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

3 29. For such other and further relief as the Court may deem equitable and appropriate.

4 As to the Sixth Cause of Action

5 30. That the Court declare, adjudge and decree that Defendants violated the record
6 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and
7 willfully failed to provide accurate itemized wage statements thereto;

8 31. For statutory penalties and actual damages pursuant to California Labor Code §
9 226(e);

10 32. For injunctive relief to ensure compliance with this section, pursuant to California
11 Labor Code § 226(h);

12 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

13 34. For such other and further relief as the Court may deem equitable and appropriate.

14 As to the Seventh Cause of Action

15 35. That the Court declare, adjudge and decree that Defendants violated California
16 Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked
17 (including minimum and overtime wages), failing to provide meal periods, failing to maintain
18 accurate records of meal periods, failing to authorize and permit rest periods, failing to maintain
19 accurate records of all hours worked and meal periods, and failing to furnish accurate wage
20 statements;

21 36. For restitution of unpaid wages to Plaintiff and all Class Members and
22 prejudgment interest from the day such amounts were due and payable;

23 37. For the appointment of a receiver to receive, manage and distribute any and all
24 funds disgorged from Defendants and determined to have been wrongfully acquired by
25 Defendants as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

26 38. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
27 California Code of Civil Procedure § 1021.5;

28 39. For injunctive relief to ensure compliance with this section, pursuant to California

1 Business & Professions Code §§ 17200, *et seq.*; and,

2 40. For such other and further relief as the Court may deem equitable and appropriate.

3 As to the Eight Cause of Action

4 41. That the Court declare, adjudge and decree that Defendants violated the California
5 Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and
6 overtime wages), failing to provide meal periods, failing to maintain accurate records of meal
7 periods, failing to authorize and permit rest periods, failing to maintain accurate records of all
8 hours worked and meal periods, failing to indemnify necessary business expenses, failing to pay
9 final wages at termination, and failing to furnish accurate wage statements;

10 42. For all actual, consequential and incidental losses and damages, according to
11 proof.

12 43. For all civil penalties pursuant to California Labor Code § 2699, *et seq.*, and all
13 other applicable Labor Code provisions;

14 44. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
15 California Labor Code § 2699;

16 45. For such other and further relief as the Court may deem equitable and appropriate.

17 As to all Causes of Action

18 46. For any additional relief that the Court deems just and proper.

19
20 Respectfully submitted,

21 Dated: June 21, 2021

MOON & YANG, APC

22 By: 

23 Kane Moon
Lilit Ter-Astvatsatryan

24 Attorneys for Plaintiff
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: June 21, 2021

MOON & YANG, APC

By: _____


Kane Moon
Lilit Ter-Astvatsatryan

Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 1055 West Seventh Street, Suite 1880,
7 Los Angeles, California 90017. On June 21, 2021, I served the foregoing document described as:

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

9 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
10 addressed as follows:

11 Chris Vlahopoulitis
12 600 Vista Way,
13 Milpitas, CA 95035

14 ***Registered Agent of Service for Defendant Daylight Foods, Inc.,***

15 [✓] **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The
16 envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the
17 firm's practice of collection and processing correspondence for mailing. Under that practice
18 it would be deposited with U.S. postal service on that same day with postage thereon fully
19 prepaid at Los Angeles, California in the ordinary course of business. I am aware that on
20 motion of the party served, service is presumed invalid if postal cancellation date or postage
21 meter date is more than one day after date of deposit for mailing in affidavit.

22 X (State) I declare under penalty of perjury under the laws of the State of
23 California that the above is true and correct.

24 Executed on June 21, 2021, at Los Angeles, California.

25 Jessica Reyes Flores

26 Name

27 
28 Signature