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14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16
17 **IN AND FOR THE COUNTY OF SAN DIEGO**

18 ADRIANA GARCIA SOSA, an individual,
19 on behalf of the State of California, as a
20 private attorney general,

21 PLAINTIFF,

22 v.

23 PLUG CONNECTION, LLC, a California
24 Corporation, and DOES 1 to 50, inclusive,

25 DEFENDANT.

CASE NO. 37-2021-00026148-CU-OE-NC

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

**Penalties Pursuant to Labor Code § 2698, et
seq. for violations of Labor Code relating to:**

1. **Minimum Wages (Cal. Labor Code §§ 1194, 1197, 1197.1);**
2. **Reimbursement of Business Expenses (Cal. Labor Code § 2802);**
3. **Overtime (Cal. Labor Code §§ 510, 1194, 1197.1, 1198);**
4. **Wage Statements (Cal. Labor Code § 226);**
5. **Final Wages (Cal. Labor Code §§ 201-203);**
6. **Timely Wages (Cal. Labor Code §§ 204, 210)**

1 Plaintiff ADRIANA GARCIA SOSA (hereinafter “GARCIA”), on behalf of the LWDA
2 and as “aggrieved employees” acting as private attorneys general under the Labor Code Private
3 Attorneys General Act of 2004, § 2698, *et seq.* (“PAGA”), complains and alleges against
4 Defendant PLUG CONNECTION, LLC. (hereinafter “Defendant” or “PLUG CONNECTION”)
5 and the DOE Defendants (hereinafter collectively “Defendants”), and each of them, as follows:

6 I. NATURE OF ACTION

7 1. This is a PAGA representative action arising out of Defendant’s systematic
8 scheme and practice of engaging in wage and hour violations on behalf of the State of California
9 and the Aggrieved Employees as defined herein.

10 2. Plaintiff, on behalf of the State of California as a private attorney general brings
11 claims for alleged Labor Code violations committed against herself and all Aggrieved Employees
12 presently or formerly employed by Defendant during the liability period pursuant to Labor Code
13 section 2698, *et seq.* seeking penalties for Defendant’s violations of California Labor Code
14 sections 201, 202, 203, 204, 210, 226, 226.3, 510, 1194, 1198, and 2802, as well as IWC Wage
15 Order Nos. 8-2001, 13-2001, or 14-2001.

16 3. Based upon the allegations herein, Plaintiff and all Aggrieved Employees are
17 Aggrieved Employees within the meaning of Labor Code section 2698, *et seq.*

18 II. PARTIES

19 4. Plaintiff GARCIA is a resident of California and at all times pertinent hereto
20 worked for Defendant in San Diego County and was harmed by Defendant’s activities in San
21 Diego County.

22 5. Plaintiff GARCIA brings this PAGA representative action on behalf of the people
23 of the State of California and “aggrieved employees” defined as follows:

24 Plaintiff and all other California residents who are or were employed by
25 Defendant as non-exempt hourly-paid employees, who worked at least one shift in
26 California from April 1, 2020 and ongoing (the “Aggrieved Employees”).

27 6. In addition, Plaintiff bring this PAGA representative action on behalf of the people
28 of the State of California and a subset of the Aggrieved Employees defined as follows:

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1 Plaintiff and all other California residents who are or were employed by
2 Defendant as non-exempt hourly-paid employees, who worked at least one shift in
3 California from June 10, 2020 and ongoing and who prepared Defendant's plant
4 products for market in a permanently fixed structure on premises owned or
5 operated by Defendant and/or prepared agricultural or horticultural products for
6 distribution and who were not paid overtime compensation for time worked over
7 eight hours in one day or 40 hours in one week (the "Overtime Subset").

8 7. Defendant Plug Connection, LLC, is a California Limited Liability Corporation
9 operating within the State of California including within San Diego County. Defendant's
10 principal place of business is believed to be 3742 Blue Bird Canyon, Rd. Vista, California, 92084.
11 Defendant has done and does business throughout the State of California including San Diego
12 County.

13 8. The true names and capacities, whether individual, corporate, associate, or
14 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
15 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
16 section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
17 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
18 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
19 true names and capacities of the Defendants designated hereinafter as DOES when such identities
20 become known.

21 9. Plaintiff represents the state of California in prosecuting claims against Defendant
22 on behalf of the Aggrieved Employees and on behalf of the Overtime Subset as set forth herein.

23 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendants
24 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
25 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
26 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
27 employer and/or joint employer of Plaintiff and the other Aggrieved Employees.

28 **III. JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction over any and all causes of action
asserted herein pursuant to Article VI, section 10 of the California Constitution and California

1 Code of Civil Procedure section 410.10 by virtue of the fact that this is a civil action in which the
2 matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action
3 asserted arises under the laws of the State of California or is subject to adjudication in the courts
4 of the State of California.

5 12. This Court has personal jurisdiction over Defendant because Defendant has caused
6 injuries in the County of San Diego, California through its acts and omissions, and by its violation
7 of the California Labor Code and California state common law.

8 13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
9 Civil Procedure section 395(a) and 395.5 because Defendant has its principal place of business in,
10 operates or does business in, and employed Plaintiff San Diego County and because the acts,
11 omissions and harms alleged herein occurred in San Diego County.

12 14. Plaintiff provided notification of the PAGA claims herein to Defendant and to the
13 LWDA on April 1, 2021. Attached hereto as **Exhibit A**.

14 15. Plaintiff provided a Supplemental Notification of PAGA claims herein to
15 Defendant and to the LWDA on June 10, 2021. Attached hereto as **Exhibit B**.

16 IV. FACTUAL BACKGROUND

17 16. Plaintiff and the Aggrieved Employees are or were employed by Defendant at one
18 or more of its locations in California within the statutory PAGA period from April 1, 2020 to the
19 present.

20 17. Plaintiff worked for Defendant from approximately January of 2020 until
21 approximately March 12, 2021, *i.e.*, during the statutory period applicable to the Aggrieved
22 Employees' claims.

23 18. Plaintiff and all Aggrieved Employees are, and at all times pertinent hereto have
24 been, classified as employees by Defendant. Defendant hires employees to work in California.

25 19. Upon information and belief, Plaintiff and all Aggrieved Employees are covered
26 by California Industrial Welfare Commission Occupational Wage Order ("Wage Order") Nos.
27 13-2001, 14-2001, or 8-2001.

28 20. Defendant Plug Connection operates nurseries selling a variety of live plants.

1 21. Upon her hiring in or about January 2020 by Defendant Plug Connection, Plaintiff
2 GARCIA's duties initially included maintenance and/or care of plants.

3 22. In or about late October 2020, however, Plaintiff GARCIA was given a different
4 position, preparing shipments of plants for market on Defendant's premises. Plaintiff GARCIA's
5 duties in that new position did not involve the growing, care, maintenance, or harvesting of
6 plants.

7 23. Accordingly, GARCIA's position after approximately late October 2020 was
8 covered by IWC Wage Order 13-2001, which among other things applies to preparing
9 agricultural or horticultural products for market in a permanently fixed structure on premises
10 owned or operated by the same employer who produced the products (or in the alternative by
11 IWC Wage Order 8-2001, which among other things applies to the preparation of agricultural or
12 horticultural products for distribution), and which required Defendant to provide Plaintiff and the
13 Overtime Subset employees overtime compensation at the rate of one and a half times their
14 regular rate for worked time over eight (8) hours in one workday, forty (40) hours in a workweek,
15 and for the first eight (8) hours worked on the seventh consecutive day, and at twice the regular
16 rate of pay for worked time over twelve (12) hours in a day or more than eight (8) hours on the
17 seventh consecutive day of work.

18 24. At all times relevant hereto, Defendant maintained a common policy of classifying
19 and/or treating all employees as not entitled to overtime compensation except for worked time
20 over nine hours in one day, and after January 2021 except for worked time over eight and a half
21 hours in one day. At all relevant times hereto, Defendant did not pay Plaintiff GARCIA and the
22 Overtime Subset employees overtime compensation at the rate of one and a half times their
23 regular rate for worked time over eight (8) hours in one workday, forty (40) hours in a workweek,
24 and for the first eight (8) hours worked on the seventh consecutive day, and at twice the regular
25 rate of pay for worked time over twelve (12) hours in a day or more than eight (8) hours on the
26 seventh consecutive day of work.

27 25. Plaintiff and the other Overtime Subset employees regularly worked more than
28 eight (8) hours in a day and/or forty (40) hours in a week.

1 26. Defendant required Plaintiff and all Aggrieved Employees to regularly perform
2 work-off-the-clock for which they did not receive any compensation. Defendant maintained a
3 common policy requiring Plaintiff and Aggrieved Employees, as part of their employment, to
4 undergo COVID-19 temperature checks and questionnaires each day before entering Defendant's
5 premises and before their shifts.

6 27. Beginning in approximately October 2020 and continuing to the present,
7 Defendant maintained a common policy requiring Plaintiff and Aggrieved Employees to form a
8 line outside of Defendant's facility and wait for Defendant to complete a temperature check of
9 each employee before employees started work each day.

10 28. Beginning in approximately January 2021 and continuing to the present, in
11 addition to the temperature checks alleged herein, Defendant maintained a common policy
12 requiring Plaintiff and Aggrieved Employees to complete a COVID-19 questionnaire before
13 starting work each day, lengthening the amount of time Plaintiff and Aggrieved Employees
14 waited in line for temperature checks before starting work.

15 29. All time waiting for and completing temperature checks and questionnaires before
16 entering Defendant's facility to start work shifts each day was off the clock; Defendant did not
17 record employees' start of work or allow employees to record the start of worked time until after
18 that employee had waited in line and Defendant had recorded completion of the temperature
19 check and questionnaire each day. Although Defendant maintained a common policy and practice
20 of requiring Plaintiff and the Aggrieved Employees to wait for and complete COVID-19
21 temperature checks and questionnaires, Defendant failed to compensate Plaintiff and the
22 Aggrieved Employees for such time.

23 30. Upon information and belief, beginning in or about February 2020 and continuing
24 to the present, Defendant maintained a common policy requiring all employees working at its
25 locations in California to wear face masks while waiting in line for Covid 19 temperature checks
26 and questionnaires and to wear such masks while at work. At all times relevant hereto, Defendant
27 did not provide at its own expense the face masks it required employees to wear, nor did
28 Defendant reimburse employees for the costs of such face masks, all in violation of Labor Code

1 §2802.

2 31. Labor Code section 1197 states the California requirement that employees must be
3 paid at least the minimum wage fixed by the Commission or by any applicable state or local law,
4 and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section 1194
5 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action
6 the unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 7-2001
7 obligates employers to pay each employee minimum wages for all hours worked.

8 32. These minimum wage standards apply to each hour employees worked for which
9 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
10 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked,
11 paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*,
12 135 Cal.App.4th 314, 324 (2005).

13 33. Employees must be paid for all “hours worked.” Hours worked is “the time during
14 which an employee is subject to the control of an employer, and includes all the time the
15 employee is suffered or permitted to work, whether or not required to do so.” *See* Wage Orders 8-
16 2001, 13-2001 and 14-2001; *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal. 4th
17 833. “[I]t is only necessary that the worker be subject to the control of the employer in order to be
18 entitled to compensation.” *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 584 (2000). An
19 employee is under the employer’s control and entitled to compensation when the employer
20 “‘directs, commands or restrains’ an employee.” *Morillion*, 22 Cal. 4th at 583 (citation omitted).

21 34. As the California Supreme Court made clear in *Morillion*, when determining
22 whether an employee’s activity is under the employer’s control entitling him or her to
23 compensation, the touchstone is not whether the employer requires the activity and thus whether
24 employees can avoid it, but the level of control employers exert over employees during the
25 activity: “The level of the employer’s control, *rather than the mere fact that the employer*
26 *requires the employees’ activity is determinative.*” *Morillion*, 22 Cal.4th at 587 (emphasis added).

27 35. In *Frlekin v. Apple Inc.*, 8 Cal. 5th 1038, 2020 Cal. LEXIS 1591 (Cal. Feb. 13,
28 2020), the California Supreme Court reaffirmed its holding in *Morillion* that “[t]he level of the

1 employer's control over its employees, rather than the mere fact that the employer requires the
2 employees' activity, is determinative" concerning whether an activity is compensable under the
3 "hours worked" control clause. *Id.* at 1056. In *Frlekin*, the California Supreme Court found that
4 time employees spent undergoing bag searches at the end of their shifts was compensable. *Id.* at
5 1056-1057. The Court reasoned its decision by analyzing factors in determining whether an
6 employer has exerted compensable control over employees:

7 We also emphasize that whether an activity is required remains probative in
8 determining whether an employee is subject to the employer's control. But, at least
9 with regard to cases involving onsite employer-controlled activities, the mandatory
10 nature of an activity is not the only factor to consider. We conclude that courts may
11 and should consider additional relevant factors—including, but not limited to, the
12 location of the activity, the degree of the employer's control, whether the activity
primarily benefits the employee or employer, and whether the activity is enforced
through disciplinary measures—when evaluating such employer-controlled conduct.
Id. at 1056.

13 To be free of the employer's control for purposes of "hours worked," the employee must be free
14 to use his or her time "effectively for his or her own purposes." *Morillion*, 22 Cal.4th at 583.

15 36. Here, as in *Frlekin*, Plaintiff and the Aggrieved Employees could not avoid
16 Defendant's required COVID-19 temperature checks and questioning each day (which took place
17 on Defendant's premises and before employees' start of work time was recorded) and could not
18 then use their time effectively for their own purposes. As such, Defendant exercised compensable
19 control over Plaintiff and the Aggrieved Employees waiting for and completing COVID-19
20 temperature checks and questioning, and Defendant owes wages to Plaintiff and the Aggrieved
21 Employees in amounts according to proof at trial.

22 37. There is no *de minimis* defense under California law to exclude such time from
23 being compensable. *See Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018) (the California
24 Supreme Court held that the *de minimis* principle was not applicable in the context of an alleged
25 policy requiring employees to work minutes off the clock routinely; *see also Frlekin*, 8 Cal. 5th at
26 1056 (hours work is defined as the time during which an employee is subject to the control of an
27 employer, and includes all the time the employee is suffered or permitted to work, whether or not
28 required to do so).

1 38. By and through the acts and omissions alleged herein, Defendant violated Labor
2 Code section 1194. As a result of Defendant's policy and practices alleged herein, Defendant
3 regularly failed to pay Plaintiff and the Aggrieved Employees for all hours worked in violation of
4 Labor Code section 1194 and 1197. Accordingly, Plaintiff is an Aggrieved Employee within the
5 meaning of PAGA and Defendant has violated Labor Code sections 1194 and 1197 with respect
6 to Plaintiff and the Aggrieved Employees.

7 39. Labor Code section 1197.1 authorizes employees who are paid less than the
8 minimum wage fixed by an applicable state or local law, or by an order of the commission a civil
9 penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
10 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
11 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
12 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
13 period for which the employee is underpaid regardless of whether the initial violation is
14 intentionally committed.

15 40. By and through the acts and omissions alleged herein, Defendants failed to
16 compensate Plaintiff and the Aggrieved Employees for all hours worked and/or all hours under
17 Defendant's control. Accordingly, through PAGA and to the extent permitted by law, Plaintiff
18 and the Aggrieved Employees are entitled to recover liquidated damages pursuant to Labor Code
19 section 1197.1. Based upon these same factual allegations, Plaintiff and the other Aggrieved
20 Employees are entitled to penalties under Labor Code section 1199.

21 41. Labor Code section 1194.2 authorizes employees to recover wages to recover
22 liquidated damages for violations of Labor Code section 1194. Where, as alleged herein as to
23 Plaintiff and the Aggrieved Employees, employees are not paid for all hours worked under Labor
24 Code section 1194, those employees may recover minimum wages for the time for which they
25 received no compensation.

26 42. Defendant does not maintain an expense reimbursement policy and/or practice
27 stating that Defendant will automatically affirmatively reimburse employees for their known
28 business expenses incurred on behalf of Defendant as required by Labor Code section 2802(a)

1 and (c) and the holding of *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal.
2 Aug. 12, 2014).

3 43. California Labor Code section 2802 requires an employer in California to
4 "indemnify his or her employee for all necessary expenditures or losses incurred by that employee
5 in direct consequence of the discharge of his or her duties." *See* Cal. Labor Code § 2802(a); *see*
6 *also* § 2802(c) (defining term "necessary" to include all "reasonable" costs). "The elements of a
7 claim under Section 2802 are: (i) the employee made expenditures or incurred losses; (ii) the
8 expenditures or losses were incurred in direct consequence of the employee's discharge of his or
9 her duties, or obedience to the directions of the employer; and (iii) the expenditures or losses were
10 reasonable and necessary." *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. Cal.
11 March 8, 2011) (citing *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). "In
12 addition, the employer 'must either know or have reason to know that the employee has incurred
13 [the] expense.'" *Id.* (citing *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901 (N.D. Cal. 2009)).
14 Where an employer has knowledge that employees are incurring a reimbursable expense, the
15 employer must "exercise due diligence to ensure each employee is reimbursed." *Marr*, at *1. The
16 right of an employee to expense reimbursements from his or her employer is not waivable. *See*
17 Cal. Labor Code § 2804; *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008).

18 44. Furthermore, under California Labor Code section 2802, employers must
19 reimburse employees for all reasonable work-related expenses. *See Cochran v. Schwan's Home*
20 *Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) ("We hold that when employees must
21 use their personal cell phones for work-related calls, Labor Code section 2802 requires the
22 employer to reimburse them. Whether the employees have cell phone plans with unlimited
23 minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell
24 phone bills."); *see also Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal.
25 Dec. 9, 2014) (Hon. Edward Chen) (certifying class of claim processors working from home with
26 section 2802 claims for landline phone reimbursements where their employer required them to
27 work from home and to have a home landline for work).

28 45. Under California Labor Code Section 2699(f)(2), which is part of California's

1 Private Attorney General Act (“PAGA”), a California employer is subject to a civil penalty of
2 \$100 per pay period per employee for the initial violation of an underlying Labor Code violation,
3 like the Section 2802 violations described herein, and an additional penalty of \$200 per pay
4 period per employee for each subsequent pay period where a violation occurred.

5 46. Here, pursuant to state and federal regulations, including CDC guidelines,
6 Defendant required Plaintiff and the Aggrieved Employees to purchase and wear face masks each
7 day of work. Defendant did not affirmatively reimburse Plaintiff and the Aggrieved Employees in
8 any amount for face mask expenses incurred throughout the PAGA Period.

9 47. By and through the acts and omissions alleged herein, Defendant’s policies and/or
10 practices require and expect, and/or with Defendant’s knowledge thereof permit, Plaintiff and the
11 Aggrieved Employees to pay for face masks incurred in direct consequence of discharging their
12 duties on behalf of Defendant, without reimbursement in full by Defendant for such expenses and
13 to be subject to Defendant’s control during uncompensated pre-shift temperature check and
14 COVID questioning time. By and through the acts and omissions alleged herein, Defendant has
15 maintained the policies and/or practices of denying reimbursement in full of Plaintiff’s and the
16 Aggrieved Employees’ necessarily incurred business expenses, or substantially similar policies,
17 throughout California and throughout the PAGA Period.

18 48. Defendant is aware or should have been aware that Plaintiff and the Aggrieved
19 Employees regularly incur and have incurred business expenses in the discharge of their duties,
20 because Defendant required Plaintiff and the Aggrieved Employees to purchase and wear face
21 masks each day. Defendant nevertheless has, throughout the PAGA Period, failed and refused to
22 reimburse Plaintiff and the Aggrieved Employees for such business expenses incurred in
23 connection with their work.

24 49. Labor Code section 510 requires an employer to compensate an employee who
25 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first
26 eight (8) hours worked on the seventh consecutive day no less than one and one-half times the
27 regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to
28 compensate employees at no less than twice the regular rate of pay when an employee works

1 more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day
2 of work. In accordance with Labor Code section 1194, Plaintiffs and the Overtime Subset
3 employees could not then agree and cannot now agree to work for a lesser wage than the amount
4 proscribed by Labor Code sections 510 and 1194.

5 50. By and through the acts and omissions alleged herein, Defendant failed to provide
6 overtime compensation and/or pay overtime compensation at the proper rate when Plaintiff and
7 the other Overtime Subset employees worked eight (8) hours in one workday, forty (40) hours in
8 a workweek, and for the first eight (8) hours worked on the seventh consecutive day, or when
9 they worked more than twelve (12) hours in a day or more than eight (8) hours on the seventh
10 consecutive day of work.

11 51. By its common policy of requiring Plaintiff and the other Overtime Subset
12 employees to work without overtime compensation at the rates required under California law,
13 Defendant willfully violated the provisions of Labor Code §§ 510, 1194 and 1199.

14 52. Defendant's failure to pay Plaintiffs and the Overtime Subset employees at the
15 required rates for all overtime was willful.

16 53. As a direct and proximate cause of Defendant's unlawful acts and omissions
17 alleged herein, Plaintiff and the Overtime Subset employees have suffered damages, including
18 loss of overtime compensation, in amounts to be established at trial.

19 54. Pursuant to Labor Code section 1194, Plaintiff and the Overtime Subset employees
20 are entitled to recover the unpaid balance of the full amount the overtime wages to which they
21 were entitled, plus interest, reasonable attorney fees and costs, in amounts to be proven at trial.

22 55. As to Plaintiff and all Aggrieved Employees, Defendant failed to provide accurate
23 itemized wage statements in accordance with Labor Code section 226(a). Labor Code section 226
24 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
25 statement in writing showing:

- 26 (1) gross wages earned;
27 (2) total hours worked by the employee;
28 (3) the number of piece-rate units earned and any applicable piece rate if the
employee is paid on a piece rate;

- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (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...

56. Labor Code section 226(e) provides:

(1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An 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).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

57. By and through the acts and omissions alleged herein, Defendant knowingly and intentionally failed to pay Plaintiff and the Aggrieved Employees all minimum wages associated with employees' time spent on COVID-19 temperature checks and questioning, and knowingly and intentionally failed to pay and/or record Plaintiff and the Overtime Subset employees'

1 overtime compensation pursuant to the Labor Code and the applicable IWC Wage Orders.
2 Moreover, Plaintiff and all Aggrieved Employees also suffered legal “injury” for purposes of
3 Labor Code section 226(e) insofar as they were unable to readily and easily determine the
4 information required to be set forth by Section 226(a). Specifically, Plaintiff and the Aggrieved
5 Employees were unable to determine the actual and accurate total hours worked, the gross wages
6 earned, the net wages earned, and the applicable hourly rates in effect during the pay period and
7 the corresponding number of hours worked at each hourly rate by the employee.

8 58. Plaintiff and the Aggrieved Employees and Overtime Subset employees will
9 prevail on their claim for PAGA penalties under Labor Code section 226(a) without having to
10 show injury or willfulness. *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017)
11 (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section
12 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section
13 226(e)(1).”); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018)
14 (finding that the “requirements for a section 226(e) claim do not apply to a PAGA claim for a
15 violation of section 226(a).”).

16 59. Labor Code section 226.3 provides that “[a]ny employer who violates subdivision
17 (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
18 (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per
19 employee for each violation in a subsequent citation, for which the employer fails to provide the
20 employee a wage deduction statement or fails to keep the required in subdivision (a) of Section
21 226.” As explained in detail above, Defendants failed to provide Plaintiff and the other Aggrieved
22 Employees with accurate itemized wage statements. Accordingly, Plaintiff and the other
23 Aggrieved Employees may recover Labor Code section 226.3 penalties under PAGA for
24 Defendants’ violations of Labor Code section 226(a).

25 60. Labor Code section 204 expressly requires that “[a]ll wages...earned by any
26 person in any employment are due and payable twice during each calendar month, on days
27 designated in advance by the employer as the regular paydays.”

28 61. Due to Defendants’ failure to pay Plaintiff and all Aggrieved Employees on timely

1 and bi-monthly basis for all applicable minimum wages and overtime, Defendants failed to timely
2 pay Plaintiff and all Aggrieved Employees all wages owed within seven (7) days of the close of
3 the payroll period in accordance with Labor Code section 204(d) on a regular and consistent
4 basis.

5 62. Labor Code section 210 provides that “in addition to, and entirely independent and
6 apart from, any other penalty provided in this article, every person who fails to pay the wages of
7 each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1)
8 For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2)
9 For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
10 for each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

11 63. As a result of the faulty compensation policies and practices described in detail
12 above and Defendants’ failure to pay Plaintiff and all Aggrieved Employees and Overtime Subset
13 employees for all time, including pre-shift COVID-19 screening time, and for all overtime under
14 applicable law, within seven (7) days of the close of the payroll period, Defendant is subject to
15 penalties under Labor Code section 210 through PAGA. *See Amaral v. Cintas Corp. No. 2*, 163
16 Cal.App.4th 1157, 1209 (2008) (affirming an award of Labor Code section 210 penalties under
17 PAGA due to the employer’s failure to timely pay wages at the proper rate in accordance with a
18 local wage ordinance).

19 64. Under Labor Code sections 201-202, an employer must provide an employee
20 wages due at the time of discharge or within up to seventy-two (72) hours of their resignation.
21 Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages of an
22 employee who is discharged or who quits, the wages of the employee shall continue as a penalty.
23 . . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

24 65. In addition, Labor Code section 256 provides that the Labor Commissioner “shall
25 impose a civil penalty in an amount not exceeding 30 days’ pay as waiting time under the terms
26 of Section 203. The California Supreme Court and California Court of Appeal have both
27 specifically recognized the ability of an aggrieved employee to recover civil penalties under
28 Labor Code section 256 for a defendant’s willful violation of Labor Code section 201 and 202

1 under PAGA. In *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 381 (2014),
2 the California Supreme Court acknowledged that PAGA penalties for the untimely payment of
3 wages included the 30 days of pay as waiting time pursuant to Labor Code section 256. *See also*
4 *Esparza v. KS Industries, L.P.*, 13 Cal.App.5th 1228, 1242 (2017) (explaining that the Labor
5 Code § 256 penalties only exist if the employer’s failure to timely pay wages upon separation was
6 willful is a “civil penalty” “recovered or imposed by the Labor Commissioner.”).

7 66. Defendant failed to pay Plaintiff and the Aggrieved Employees and the Overtime
8 Subset employees whose employment with Defendant ended during the relevant time period all
9 wages owed, including but not limited to minimum wages and overtime, within the time
10 constraints proscribed in Labor Code sections 201-202 at the time of their termination/separation.
11 Thus, by and through the acts and omissions herein, Defendant’s policies caused Plaintiff and the
12 Aggrieved Employees and the Overtime Subset employees to leave their employment with
13 Defendant without being compensated for all wages due in violation of Labor Code sections 201,
14 202, 203.

15 67. Plaintiff has fully and completely exhausted her administrative remedies under
16 PAGA prior to proceeding with this action. Specifically, Plaintiff filed her PAGA Notice online
17 with the Labor Workforce Development Agency (“LWDA”) and sent letters by certified mail to
18 Defendant setting forth the facts and theories of the violations alleged against Defendant, as
19 prescribed by Labor Code section 2698 *et seq.* (See **Exhibits A & B**).

20 68. As required by PAGA, Plaintiff also submitted the \$75.00 filing fee to the LWDA
21 by regular mail. Pursuant to Labor Code section 2699.3(a)(2)(A), no notice was received and/or
22 will have been received by Plaintiff from the LWDA evidencing its intention to investigate within
23 sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is/was therefore,
24 entitled to commence and proceed with a civil action pursuant to Labor Code section 2699.

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V. FIRST CAUSE OF ACTION
Plaintiff and all Aggrieved Employees Against All Defendants
For Penalties Pursuant To Labor Code § 2698, *et seq.*
For Violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226(e),
226.3, 510, 1194, 1197, 1197.1, 1198, 1199, and 2802,
And IWC Wage Order Nos. 8-2001, 13-2001, and/or 14-2001

69. Plaintiff, on behalf of the State of California, realleges and incorporates by reference all previous paragraphs.

70. By and through the acts and omissions alleged herein, Plaintiff and the Aggrieved Employees seek penalties under Labor Code section 2698, *et seq.* because of Defendant’s violations of Labor Code sections 201, 202, 203, 204, 210, 226(a), 226(e), 226.3, 510, 1194, 1197, 1197.1, 1198, 1199, and 2802, and IWC Wage Order Nos. 8-2001, 13-2001, and/or 14-2001.

71. Under Labor Code sections 2699(f)(2) and 2699.5, for each such violation, (except for, §226, which triggers, §226.3 penalties) Plaintiff and all other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula unless a civil penalty is already proscribed under the Labor Code:

- \$100 for the initial violation per employee per pay period; and
- \$200 for each subsequent violation per employee per pay period.

These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees.

72. Labor Code section 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” Pursuant to Labor Code section 210, “[t]welve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the

1 credit of the General Fund.” As a result of the faulty compensation policies and practices
2 described in detail above, the State of California is entitled to recover penalties under Labor Code
3 sections 210, 226.3 and/or 26999(f) through PAGA.

4 **RELIEF REQUESTED**

5 **WHEREFORE**, Plaintiff prays for the following relief:

- 6 1. For penalties under Labor Code section 2698, *et seq.* and 226.3 for Plaintiff and all
7 Aggrieved Employees because of Defendant’s violation of Labor Code sections 201, 202, 203,
8 204, 210, 226(a), 226(e), 510, 1194, 1197, 1197.1, 1198, 1199, and 2802, and IWC Wage Order
9 Nos. 8-2001, 13-2001, or 14-2001.
- 10 2. An award providing for payment of costs of suit;
- 11 3. An award of attorneys’ fees; and
- 12 4. Such other and further relief as this Court may deem proper and just.

13
14 Dated: June 11, 2021

ACKERMANN & TILAJEF, P.C.
LAW OFFICE OF TATIANA HERNANDEZ PC

15
16 By:  _____

CRAIG J. ACKERMANN

Attorney for Plaintiff and the Aggrieved Employees

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EXHIBIT A

April 1, 2021

Filed Via LWDA's PAGA Claim Notice Online Form

Copies Sent Via Certified Mail to:

Human Resources
Plug Connection, LLC
3742 Blue Bird Canyon Road
Vista, CA 92804

Re: *Adriana Garcia Sosa v. Plug Connection, LLC*
California Labor Code §2699.3; Notice of Intent to File Suit

Gentlepersons:

Our firm, Ackermann & Tilajef, P.C., along with our co-counsel Law Office of Tatiana Hernandez, P.C., represents Adriana Garcia Sosa ("Plaintiff") in connection with her individual and PAGA representative claims and potentially class action claims against Plug Connection, LLC ("Defendant") based on:

1. Defendant's failure to pay all minimum wages due (Cal. Labor Code §§ 1194, 1197, 1197.1, 1198, 1199);
2. Defendant's failure to reimburse its non-exempt employees for business expenses incurred on behalf of Defendant (Cal. Labor Code § 2802);
3. Defendant's failure to issue accurate and complete itemized wage statements (Cal. Labor Code § 226);
4. Defendant's failure to pay final wages (Cal. Labor Code §§ 201-203)
5. Defendant's failure to pay timely wages (Cal. Labor Code §§ 204, 210)
6. Deceptive/fraudulent business practices based on the foregoing (Business and Professions Code § 17200); and
7. Penalties based on the foregoing pursuant to the Private Attorney Generals Act ("PAGA") (Labor Code sections 2698 *et seq.*).

Plaintiff intends to pursue claims for PAGA penalties during the period of time from one year ago and ongoing (the "PAGA Period") and she intends to pursue the unpaid minimum wage and reimbursement claims for the period from four years ago and on-going (the "Class Period") in a class action (assuming no arbitration agreements exists) and PAGA representative action (for the PAGA Period) to be filed in the Superior Court of California (the "Action").

In connection with the PAGA claim, Plaintiff represents the State of California LWDA and the following group of aggrieved employees: *Plaintiff and all other California residents who are or were employed by Defendant Plug Connection, LLC, as non-exempt hourly-paid employees, who worked at least one shift in California from one year ago and ongoing* (the “Aggrieved Employees”). All such aggrieved employees were subject to Defendant’s unlawful policies, as described in further detail below.

Defendant’s Failure to Pay Minimum Wages

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 14-2001 obligates employers to pay each employee minimum wages for all hours worked.

These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta*, 135 Cal.App.4th at 324.

Here, Defendant required Plaintiff and all Aggrieved Employees to regularly perform work-off-the-clock for which they did not receive any compensation. Specifically, as part of the Aggrieved Employees’ employment, Defendant required Plaintiff and all Aggrieved Employees to undergo COVID-19 temperature checks and questionnaires when entering the premises at the start of their shift. Specifically, from October 2020 to December 2020, Plaintiff and Aggrieved Employees formed a line outside of Defendant’s facility and were given a temperature check by Defendant’s assistant managers pre-shift, while off the clock. From January 2021 to the present, Plaintiff and many Aggrieved Employees formed a line outside of Defendant’s facility and were given a pre-shift COVID-19 questionnaire followed by a temperature check conducted by the assistant manager. Only afterwards did Plaintiff and Aggrieved Employees write down their temperature and name and finally clock into their shifts. Although Defendant maintained a common policy and practice of requiring Plaintiff and the Aggrieved Employees to stand/wait in line for COVID-19 temperature checks and questionnaires during the PAGA Period, Defendant failed to compensate Plaintiff and the other Aggrieved Employees for such time.

Employees must be paid for all “hours worked.” 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.” *See* Wage Order 9-2001, Subd. 2(K); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal. 4th 833. “[I]t is only necessary that the worker be subject to the control of the employer in order to be entitled to compensation.” *Morillion v. Royal Packing Co.* 22 Cal. 4th 575, 584 (2000). An employee is under the employer’s control and entitled to compensation when the employer “‘directs, commands or restrains’ an employee.” *Morillion*, 22 Cal. 4th at 583 (citation omitted).

As the California Supreme Court made clear in *Morillion*, when determining whether an employee's activity is under the employer's control entitling him or her to compensation, the import is not whether the employer requires the activity and thus whether employees can avoid it, but the level of control employers exert over employees during the activity: "The level of the employer's control, *rather than the mere fact that the employer requires the employees' activity is determinative.*" *Morillion*, 22 Cal.4th at 587 (emphasis added).

In *Frlekin v. Apple Inc.*,¹ the California Supreme Court reaffirmed its holding in *Morillion* that "[t]he level of the employer's control over its employees, rather than the mere fact that the employer requires the employees' activity, is determinative" concerning whether an activity is compensable under the "hours worked" control clause. In *Frlekin*, the California Supreme Court found that time employees spent undergoing bag searches at the end of their shifts was compensable. The Court reasoned its decision by analyzing factors in determining whether an employer has exerted compensable control over employees:

We also emphasize that whether an activity is required remains probative in determining whether an employee is subject to the employer's control. But, at least with regard to cases involving *onsite* employer-controlled activities, the mandatory nature of an activity is not the only factor to consider. We conclude that courts may and should consider additional relevant factors—including, but not limited to, the location of the activity, the degree of the employer's control, whether the activity primarily benefits the employee or employer, and whether the activity is enforced through disciplinary measures—when evaluating such employer-controlled conduct.

To be free of the employer's control for purposes of "hours worked," the employee must be free to use his or her time "effectively for his or her own purposes." *Morillion*, 22 Cal.4th at 583.

Here, as in *Frlekin*, Plaintiff and the aggrieved employees could not avoid Defendant's pre-shift, on-remises COVID-19 temperature checks and questionnaires and could not use their time pre-shift while in line and during these checks effectively for their own purposes. As such, Defendant exercised compensable control over aggrieved employees undergoing COVID-19 temperature checks and questionnaires and owes wages for this time.

Through its policy and practice of requiring Plaintiff and the Aggrieved Employees to undergo pre-shift COVID-19 temperature checks and questionnaires, Defendant clearly violated Labor Code § 1194. As a result of Defendant's policy and practices described above, Defendant regularly failed to pay Plaintiff and all aggrieved employees for all hours worked in violation of Labor Code § 1194 and 1197. Accordingly, Plaintiff is an aggrieved employee within the meaning PAGA and Defendant has violated Labor Code §§ 1194 and 1197 with respect to Plaintiff and the Aggrieved Employees. Notably, Defendant cannot defend itself by arguing that the time spent pre-shift on temperature checks was de minimis. *See, Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018) (the California Supreme Court held that the de minimis principle was not

¹(2020) 8 Cal. 5th 1038, 1051 (citing *Morillion*, 22 Cal.4th at 587).

applicable in the context of an alleged policy requiring employees to work minutes off the clock routinely; *see also*, *Frlekin*, 2020 Cal. LEXIX 547 (February 13, 2020) (hours work is defined 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).

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages 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....[and] (2) [f]or 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. As set forth above, Defendant failed to compensate Plaintiff and all aggrieved employees for all hours worked. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1. Based upon these same factual allegations, Plaintiff and the other aggrieved employees are entitled to penalties under Labor Code § 1199.

Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiff and the other aggrieved employees experienced on a regular basis, are not paid for all hours worked under Labor Code § 1194, the employees may recover minimum wages for the time for which they received no compensation.

Defendant's Failure to Reimburse for Employees' Business Expenses Incurred on Behalf of Defendant

Defendant does not maintain an expense reimbursement policy and/or practice stating that Defendant will affirmatively reimburse Plaintiff and the aggrieved employees for their business expenses incurred on behalf of Defendant.

Specifically, California Labor Code section 2802 requires an employer in California to "indemnify his or her employee for all necessary expenditures or losses incurred by that employee in direct consequence of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see also* 2802(c) where "necessary" is defined to include all "reasonable" costs. "The elements of a claim under Section 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses were incurred in direct consequence of the employee's discharge of his or her duties, or obedience to the directions of the employer; and (iii) the expenditures or losses were reasonable and necessary." *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8, 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). "In addition, the employer 'must either know or have reason to know that the employee has incurred [the] expense.'" *Id.* (*citing Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009)). Where an employer has knowledge that employees are incurring a reimbursable expense, the employer must "exercise due diligence to ensure each employee is reimbursed." *Marr*, at *1. The right of an employee to expense reimbursements

from his or her employer is not waivable. *See* Cal. Labor Code section 2804; *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008).

Here, Plaintiff and the Aggrieved Employees are required by Defendant to purchase their own facemasks during the COVID-19 pandemic, as also required by the Centers for Disease Control and Prevent (“CDC”).² Defendant did not affirmatively reimburse Plaintiff and the aggrieved employees in any amount for any such expenses incurred throughout the PAGA Period even though the CDC requires Plaintiff and Aggrieved Employees to wear facemasks as a precondition of work.

Under California law, if an employer requires that an employee wear a uniform, like the facemasks here, the employer must pay the cost of the uniform. *See*, Labor Code Section 2802; IWC Wage Order No. 9, Section 9 (“When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer”). In addition, the employer must pay for all necessary equipment used by employees unless they earn twice minimum wage. Here, they never earned twice minimum wage. Accordingly, Defendant must pay for the costs of the masks.

In short, Defendant’s policies and/or practices require and expect, and/or with Defendant’s knowledge thereof permit, Plaintiff and the aggrieved employees to pay for business expenses incurred in direct consequence of discharging their duties on behalf of Defendant, without reimbursement in full by Defendant for such expenses. Defendant has maintained its policies and/or practices of denying reimbursement in full of Plaintiff’s and the aggrieved employees’ necessarily incurred business expenses, or substantially similar policies, throughout California and throughout the PAGA Period.

Defendant is aware or should have been aware that Plaintiff and the aggrieved employees regularly incur and have incurred business expenses in the discharge of their duties, since they are obligated to wear facemasks on a daily basis, by virtue of Defendant’s instructions to Plaintiff and the aggrieved employees. Defendant nevertheless has, throughout the PAGA Period, failed and refused to reimburse Plaintiff and the aggrieved employees for such business expenses incurred by them in connection with their work.

Defendant’s Failure to Issue Accurate/Itemized Wage Statements

As to Plaintiff and all aggrieved employees, Defendant also failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;

² See <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (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...

Similarly, Labor Code § 226(e) provides:

- (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.
- (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.
- (B) An 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).
 - (ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).
 - (iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.
 - (iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

Here, Defendant failed to issue wage statements to Plaintiff and the Aggrieved Employees that included the name and address of the company in violation of section 226(a)(8). In addition, the total hours worked and total wages earned was incorrect due to the exclusion of time spent pre-shift on COVID-19 tests, questions, etc. In addition to violating Labor Code § 226(a)(8), Defendant also knowingly and intentionally failed to pay Plaintiff and all aggrieved

employees all minimum wages in violation of section 226(a)(1), (2), and (5). Defendant has clearly violated Labor Code § 226 with respect to Plaintiff and all aggrieved employees.

Plaintiff and the aggrieved employees will prevail on their claim for PAGA penalties under Labor Code § 226(a) without having to show injury or willfulness. *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the “requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section 226(a).”).

Moreover, Plaintiff and all aggrieved employees also suffered legal “injury” for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine the information required to be set forth by Section 226(a). In addition, Plaintiff and the aggrieved employees were unable to determine at all the total hours worked by the employee, the gross wages earned, and the net wages earned.

Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may recover Labor Code § 226.3 penalties under PAGA for Defendant’s violations of Labor Code § 226(a) in lieu of the normal penalties provided for in Section 226.

Defendant’s Failure to Pay Timely Wages

Labor Code § 204 expressly requires that “[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.”

Due to Defendant’s failure to pay Plaintiff and all aggrieved employees on timely and bi-monthly basis for all applicable minimum wages, Defendant failed to timely pay Plaintiff and all aggrieved employees all wages owed within seven (7) days of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent basis.

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

As a result of the faulty compensation policies and practices described in detail above and Defendant's failure to pay Plaintiff all aggrieved employees within seven (7) days of the close of the payroll period including for their off the clock pre-shift COVID-19 checks time, the State of California is entitled to recover penalties under Labor Code § 210 through PAGA. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of Labor Code section 210 penalties under PAGA due to the employer's failure to timely pay wages at the proper rate in accordance with a local wage ordinance).

Defendant's Failure to Pay Final Wages

Under Labor Code §§ 201-202, an employer must provide an employee wages at the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

In addition, Labor Code § 256 provides that the Labor Commissioner "shall impose a civil penalty in an amount not exceeding 30 days' pay as waiting time under the terms of Section 203. The California Supreme Court and California Court of Appeal have both specifically recognized the ability of an aggrieved employee to recover civil penalties under Labor Code § 256 for a defendant's willful violation of Labor Code § 201 and 202 under PAGA. In *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 381 (2014), the California Supreme Court acknowledged that PAGA penalties for the untimely payment of wages included the 30 days of pay as waiting time pursuant to Labor Code § 256. *See also Esparza v. KS Industries, L.P.* 13 Cal.App.5th 1228, 1242 (2017) (explaining that the Labor Code § 256 penalties only exist if the employer's failure to timely pay wages upon separation was willful is a "civil penalty" "recovered or imposed by the Labor Commissioner.").

As described in detail above, Defendant failed to pay Plaintiff and other aggrieved employees whose employment has ended all wages owed, including but not limited to minimum wages for COVID-19 pre-shift checking time, within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants' faulty policies described above, Plaintiff and all aggrieved employees left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

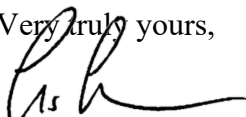
Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency of our intent to pursue a PAGA representative action and potentially a civil class action lawsuit (if no arbitration agreements exist) against Defendant that will also include a PAGA claim for civil penalties under Labor Code § 2699 to be brought by the Plaintiff, individually and on behalf of the aggrieved employees from at least one year ago through the present for the PAGA claims and from four years ago to the present for the class claims, if any.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters. If Defendant is interested in attempting to resolve this matter on a class-wide and/or

PAGA representative basis, please contact me or have your lawyer contact me **on or before May 1, 2021**, so that we can discuss an informal discovery plan and the possibility of early mediation.

If you have any questions, please do not hesitate to call.

Very truly yours,



Craig Ackermann

CC: Tatiana Hernandez (by email)

EXHIBIT B

June 10, 2021

Filed Via LWDA's PAGA Claim Notice Online Form

Copies Sent Via Certified Mail to:

Human Resources
Plug Connection, LLC
3742 Blue Bird Canyon Road
Vista, CA 92804

Re: *Adriana Garcia Sosa v. Plug Connection, LLC*
California Labor Code §2699.3; Notice of Intent to File Suit

Dear Sir or Madam:

This office, along with our co-counsel, the Law Office of Tatiana Hernandez, P.C., represents Adriana Garcia Sosa ("Plaintiff") and a proposed group of aggrieved employees ("Aggrieved Employees") consisting of current and former employees who have worked for Defendant Plug Connection, LLC ("Defendant") in the State of California in connection with claims for, among other things, PAGA penalties based on Defendant's Labor Code violations against Plaintiff and other Aggrieved Employees.

The purpose of this letter is to provide Defendant and the LWDA with clarification as to the claims alleged in Plaintiff's notice of PAGA violations served on Defendant and filed with the LWDA on April 1, 2021. Our prior PAGA Notice dated March 31, 2021 is incorporated herein by reference in its entirety.

Although not necessary, as PAGA's administrative exhaustion requirement does not require the inclusion of every potential fact or every future theory—only that the notice "provide reasonably details facts and theories,"—Plaintiff, in an abundance of caution, wishes to provide further information in connection with the existing PAGA penalty claims against Defendant. *See Cardenas v. Mclane Food Services, Inc.*, 796 F. Supp. 2d 1246, 1261 (C.D. Cal. Jun 23, 2011); *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) No. 5:10-CV-01070 EJD, 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) No. CV 08-07919 GAF P.JWX, 2012 WL 10890355, at *4.

In further support of the allegations previously set forth in the PAGA Notice that Defendant violated California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, Plaintiff offers the following additional information.¹

Accordingly, Plaintiff hereby clarifies that, in addition to all previously identified facts, circumstances and claims, Plaintiff, on behalf of herself and subset of Aggrieved Employees, intends to pursue claims against Defendant for PAGA penalties pursuant to the Private Attorney Generals Act (“PAGA”) (Labor Code sections 2698 *et seq.*) for Defendant’s failure to pay overtime compensation (Cal. Labor Code §§ 510, 1194, 1198).

Plaintiff intends to pursue claims for PAGA penalties during the period of time from one year prior to the date of Plaintiff’s PAGA notice and ongoing (the “PAGA Period”) and she intends to pursue the unpaid overtime claims for the period from four years ago and on-going (the “Class Period”) in a class action and PAGA representative action to be filed in the Superior Court of California (the “Action”).

In connection with the PAGA claim, Plaintiff represents the State of California LWDA and the following group of aggrieved employees:

Plaintiff and all other California residents who are or were employed by Defendant as non-exempt hourly-paid employees, who worked at least one shift in California from one year ago and ongoing and who prepared Defendant’s plant products for market in a permanently fixed structure on premises owned or operated by Defendant and/or prepared agricultural or horticultural products for distribution and who were not paid overtime compensation for time worked over eight hours in one day or 40 hours in one week (the “Overtime Subset”).

All such Overtime Subset employees were subject to Defendant’s unlawful policies, as described in further detail below.

Defendant’s Failure to Pay Overtime

Upon her hiring in or about January 2020 by Defendant Plug Connection, Plaintiff’s duties initially included maintenance and/or care of plants. In or about late October 2020, Plaintiff was given a different position, preparing shipments of plants for market on Defendant’s premises. Plaintiff’s duties in that new position did not involve the growing, care, maintenance, or harvesting of plants.

Accordingly, Plaintiff’s position after approximately late October 2020 was covered by IWC Wage Order 13-2001, which among other things applies to preparing agricultural or horticultural products for market in a permanently fixed structure on premises owned or operated by the same employer who produced the products (or in the alternative by IWC

¹ All claims, facts and bases presented in the PAGA Notice are hereby incorporated as though fully set forth herein, and the lack of reference to any such claim, fact or basis in this supplemental notice is not a waiver.

Wage Order 8-2001, which among other things applies to the preparation of agricultural or horticultural products for distribution), and which also required Defendant to provide Plaintiff overtime compensation at the rate of one and a half times her regular rate for worked time over eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day, and at twice the regular rate of pay for worked time over twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

Defendant maintained a common policy of classifying and/or treating all employees, regardless of duties, as not entitled to overtime compensation except for worked time over nine hours in one day, and after January 2021 except for work time over eight and a half hours in one day. At all relevant times hereto, Defendant did not pay Plaintiff and the Overtime Subset employees overtime compensation at the rate of one and a half times their regular rate for work time over eight (8) hours in one workday, over forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day, and at twice the regular rate of pay for worked time over twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

Plaintiff and the other Overtime Subset employees regularly worked more than eight (8) hours in a day and/or forty (40) hours in a week.

Plaintiff and the Overtime Subset employees intend to seek penalties under Labor Code section 2698, *et seq.* because of Defendant's violations of Labor Code sections 510, 1194, 1197.1 and 1198 and Section 3.5 of the IWC Wage Order Nos. 8-2001 and/or 13-2001.

Labor Code section 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code section 1194, Plaintiffs and the Overtime Subset employees could not then agree and cannot now agree to work for a lesser wage than the amount proscribed by Labor Code sections 510 and 1194.

By its common policy of requiring Plaintiff and the other Overtime Subset employees to work without overtime compensation at the rates required under California law, Defendant willfully violated the provisions of Labor Code §§ 510, 1194 and 1199.

Defendant's failure to pay Plaintiffs and the Overtime Subset employees at the required rates for all overtime was willful.

As a direct and proximate cause of Defendant's unlawful acts and omissions alleged herein, Plaintiff and the Overtime Subset employees have suffered damages, including loss of overtime compensation, in amounts to be established at trial.

Pursuant to Labor Code section 1194, Plaintiff and the Overtime Subset employees are entitled to recover the unpaid balance of the full amount the overtime wages to which they were entitled, plus interest, reasonable attorney fees and costs, in amounts to be proven at trial.

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency of our intent to pursue a PAGA representative action and a civil class action lawsuit against Defendant that will also include a PAGA claim for civil penalties under Labor Code § 2699 to be brought by the Plaintiff, individually and on behalf of the aggrieved employees from at least one year ago through the present for the PAGA claims and from four years ago to the present for the class claims.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters. If Defendant is interested in attempting to resolve this matter on a class-wide and/or PAGA representative basis, please contact me or have your lawyer contact me, so that we can discuss an informal discovery plan and the possibility of early mediation.

If you have any questions, please do not hesitate to call.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. Ackermann', with a stylized flourish at the end.

Craig Ackermann