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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Mouang Saechao, Deputy

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Aggrieved Employee of Defendants,
on Behalf of the State of California's
Labor and Workforce Development Agency
for All Aggrieved Employees of Defendants*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF STANISLAUS

CRISTIAN CORONA, Aggrieved Employee
of Defendants, on Behalf of the State of
California's Labor and Workforce
Development Agency for All Aggrieved
Employees of Defendants,

Plaintiff,

v.

GEMPERLE EGG PACKING CO. INC., a
California Corporation; and DOES 1-100,
Inclusive,

Defendants.

Case No. CV-21-004163

REPRESENTATIVE ACTION

COMPLAINT FOR:

**VIOLATION OF CALIFORNIA'S LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB.
CODE 2698, ET SEQ.)**

DEMAND FOR JURY TRIAL

This case has been assigned to Judge Mayne, John R,
Dept. 21
Department , for all purposes including Trial.

1 Plaintiff CRISTIAN CORONA (hereinafter, "Plaintiff"), who is an aggrieved employee of
2 Defendant GEMPERLE EGG PACKING CO. INC, and DOES 1 through 100, inclusive,
3 (collectively, "Defendants"), brings this representative action as proxy for the State of California's
4 Labor and Workforce Development Agency ("LWDA") on behalf of all current and former
5 aggrieved employees of Defendants in California, and hereby alleges the following facts and
6 claims against Defendants, and respectfully request civil penalties, all other available relief, and a
7 trial by jury of all issues and causes of action so triable.

8 INTRODUCTION

9 1. Plaintiff brings this representative action as the proxy for the State of California's
10 LWDA against Defendants for civil penalties pursuant to California's Private Attorneys General
11 Act of 2004 (hereinafter, the "PAGA"), Labor Code section 2698, *et seq.*, resulting from
12 Defendants' violations of "wage and hour" laws protective of Defendants' aggrieved employees
13 under the California Labor Code and the Industrial Welfare Commission ("IWC") Wage Orders.
14 The PAGA permits an aggrieved employee to bring a representative action as the State's
15 designated proxy on behalf of himself and all other current and former non-exempt aggrieved
16 employees of an employer to recover civil penalties for violation of California's Labor Code.

17 2. Defendants' systematic pattern of Labor Code and IWC Wage Order violations
18 toward Plaintiff and other current and former aggrieved employees include, but are not limited to:

19 a. Failure to compensate for all hours worked in violation of Labor Code
20 sections 204, 1194, 1197, and 1198.

21 b. Failure to pay all wages owed for time worked in violation of Labor Code
22 section 510.

23 c. Failure to provide meal periods and/or premium pay for non-compliant
24 meal periods in violation of Labor Code sections 226.7, 512, 558, 1198, and 1199 and Section 11
25 of the IWC Wage Order(s);

26 d. Failure to authorize and permit all paid rest periods and/or provide premium
27 pay for non-compliant rest periods in violation of Labor Code sections 226.7, 1197, 1198, and
28 1199, and Section 12 of the IWC Wage Order(s);

1 e. Failure to provide suitable seating in violation of section 14 of the IWC
2 Wage Order(s) and Labor Code section 1198;

3 f. Failure to furnish accurate itemized wage statements in violation of Labor
4 Code section 226(a); and

5 g. Failure to timely pay all final wages owed upon separation of employment
6 in violation of Labor Code sections 201, 202, and 203.

7 3. Section 14(a) of the applicable Wage Order states that, “[a]ll working employees
8 shall be provided with suitable seats when the nature of the work reasonably permits the use of
9 seats.” Defendants failed to provide its aggrieved employees with seats despite the nature of the
10 work reasonably permitting the use of seats.

11 **PARTIES**

12 4. Plaintiff CRISTIAN CORONA is an individual over the age of eighteen (18).
13 Plaintiff is and, at all relevant times mentioned in this Complaint, was a California citizen residing
14 within Merced County, California. Plaintiff was employed by Defendants in California as an
15 hourly paid, non-exempt employee from approximately October of 2013 to October 12, 2020 at
16 Defendants’ facilities in Turlock, California. At all relevant times herein, Plaintiff was an
17 “employee” as that term is used in the Labor Code. During the applicable statutory period,
18 Plaintiff was subject to various policies, procedures, and practices implemented by Defendants
19 that, as alleged herein, were and are in violation of the Labor Code.

20 5. Defendant GEMPERLE EGG PACKING CO. INC. is and at all relevant times
21 herein was a California corporation, having their principal place of business at 10218 Lander
22 Avenue, Turlock, California 95380, and are the owners and operators of an industry, business
23 and/or facility licensed to do business and actually doing business in the State of California as a
24 farm and leading producer of organic and cage free eggs.¹ Defendant GEMPERLE EGG
25 PACKING CO. INC. is an “employer” as the term is used in the Labor Code and IWC Wage
26 Orders.

27 _____
28 ¹ See, Gemperle Family Farms, <https://gemperle.com/history/> (last visited August 2, 2021)

1 6. The Defendants sued by the fictitious names DOES 1 through 100, inclusive, are on
2 information and belief now, and/or at all times mentioned in this Complaint were licensed to do
3 business and/or actually doing business in California, including Stanislaus County, and each of the
4 fictitiously named Defendants are responsible for the conduct alleged in this Complaint. Plaintiff
5 does not know the true names or capacities, whether individual, partner or corporate, of DOES 1
6 through 100, inclusive and for that reason, DOES 1 through 100 are sued under such fictitious
7 names pursuant to California Code of Civil Procedure (“Code of Civil Procedure”) section 474.
8 Plaintiff will seek leave of court to amend this Complaint to allege such names and capacities as soon
9 as they are ascertained.

10 7. Defendants, and each of them, are now and/or at all times mentioned in this
11 Complaint were in some manner legally responsible for the events, happenings and circumstances
12 alleged in this Complaint.

13 8. Defendants, and each of them, proximately subjected Plaintiff to the unlawful
14 practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

15 9. Defendants, and each of them, are now and/or at all times mentioned herein were
16 the agents, servants and/or employees of some or all other Defendants, or vice-versa, and in doing
17 the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this
18 Complaint were acting within the course and scope of that agency, servitude and/or employment.

19 10. Defendants, and each of them, are now and/or at all times mentioned in this
20 Complaint were members of and/or engaged in a joint venture, partnership and common
21 enterprise, and were acting within the course and scope of, and in pursuance of said joint venture,
22 partnership and common enterprise.

23 11. Defendants, and each of them, at all times mentioned in this Complaint concurred
24 and contributed to the various acts and omissions of each and every one of the other Defendants in
25 proximately causing the complaints, injuries and/or damages alleged in this Complaint.

26 12. Defendants, and each of them, at all times mentioned in this Complaint approved
27 of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in
28 this Complaint.

13. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

JURISDICTION AND VENUE

14. The California Superior Court has jurisdiction in this matter pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other trial courts.” The statutes under which this action is brought do not specify any other specific basis for jurisdiction.

15. The California Superior Court also has jurisdiction in this matter because both the individual and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

16. The California Superior Court also has jurisdiction over Defendants because they are corporations and/or entities and/or persons with sufficient minimum contacts in California, are citizens of California, or otherwise intentionally availed themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code. Thus, this Court maintains appropriate jurisdiction to hear this matter.

17. Venue is proper in the Superior Court of California for the County of Stanislaus, pursuant to Code of Civil Procedure section 395(a) and Code of Civil Procedure section 395.5 in that liability arose in Stanislaus County because at least some of the acts and omissions that are the subject matter of this Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts business, exists, and/or has an agent in Stanislaus County.

FACTUAL ALLEGATIONS

18. During the applicable statutory period, Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately October of 2013 to October 12, 2020.

19. During the relevant statutory period, Defendants failed to pay Plaintiff for all hours worked and overtime hours worked after eight hours in a day and/or after forty hours in a week

1 due to Defendants' policy and practice of rounding the time worked by non-exempt employees in
2 Defendants' favor such that Plaintiff was not paid for all time actually worked.

3 20. During the relevant statutory period, Defendants further failed to compensate
4 Plaintiff for all overtime hours worked based upon the appropriate regular rate of pay by not
5 taking into account all remuneration paid, including non-discretionary bonuses earned by Plaintiff.

6 21. During the relevant statutory period, Defendants failed and fail to provide Plaintiff
7 with compliant thirty minute off-duty thirty-minute-long meal periods for work periods and failed
8 to pay him premium wages at the regular rate of pay thereto by reason of Defendants' policy and
9 practice of forcing employees to take late and short meal periods. Further, Plaintiff was not
10 provided the opportunity to take a second meal period in instances where he worked over ten or
11 twelve hours and was not paid a premium wage for these non-compliant meal periods.

12 22. During the relevant statutory period, Defendants failed to relinquish control over
13 Plaintiff to provide him with legally-compliant ten (10) minute off-duty rest periods for every four
14 (4) hours of work or major fraction thereof, as required by California law and failed to pay
15 premiums for the in compliant rest periods.

16 23. During the relevant statutory period, Defendants failed to provide Plaintiff with
17 accurate itemized wage statements. For example, Plaintiff was furnished with wage statements that
18 did not identify Gemperle Egg Packing Co, Inc. as the employer. The wage statements are also
19 inaccurate because they show the incorrect total hours worked by Plaintiff. For example, the wage
20 statements include vacation time into the total hours worked. Additionally, as a result of alleged
21 violations discussed above, Defendants furnished wage statements that failed to correctly show,
22 among other items: (1) the incorrect hours worked as a result of the rounding practice, (2) gross
23 wages earned, (3) all deductions, and (4) net wages earned.

24 24. During the relevant statutory period, Defendants willfully failed to pay all wages
25 owed to Plaintiff upon separation of employment. Defendants still have yet to pay Plaintiff all
26 final wages owed to him due to their failure to pay Plaintiff for all minimum wages, overtime
27 compensation, and their failure to pay meal and rest period premium wages owed.

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26. During the applicable statutory period, Plaintiff and other current and former aggrieved employees were subject to the same various policies, procedures, and practices implemented by Defendants that, as alleged herein, were and are in violation of the Labor Code.

28. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy and/or practice, Defendants failed to pay Plaintiff and all other aggrieved employees for all overtime compensation based upon the regular rate of pay by not taking into account all remuneration paid, including non-discretionary bonuses.

30. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy and/or practice, Defendants failed to relinquish control over Plaintiff and all other aggrieved employees to provide them with legally-compliant ten (10) minute off-duty rest periods for every

1 four (4) hours of work or major fraction thereof, as required by California law and failed to pay
2 Plaintiff and all other aggrieved employees premiums for the incompliant rest periods.

3 31. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy
4 and/or practice, Defendants failed to provide and all aggrieved employees with suitable seating
5 during their employment as required by section 14 of the applicable Wage Order and Labor Code
6 section 1198. For example, aggrieved employees were denied and not provided with seating
7 during shifts in which they worked in a position which would reasonable permit the use of seating.
8 In particular, packers perform common tasks which could be performed while seated and the
9 location of the tasks to be performed made it feasible to do so while seated. Yet, Defendants failed
10 and fails to provide them with suitable seating.

11 32. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy
12 and/or practice, Defendants, failed to provide Plaintiff and all other aggrieved employees with
13 accurate itemized wage statements because the wage statements did not identify Gemperle Egg
14 Packing Co, Inc. as the employer. The wage statements are also inaccurate because they show the
15 incorrect total hours worked by Plaintiff and all other aggrieved employees. For example, the
16 wage statements include vacation time into the total hours worked. Additionally, as a result of
17 alleged violations discussed above, Defendants furnished wage statements that failed to correctly
18 show, among other items: (1) the incorrect hours worked as a result of the rounding practice, (2)
19 gross wages earned, (3) all deductions, and (4) net wages earned.

20 33. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy
21 and/or practice, Defendants willfully failed to pay all wages owed to Plaintiff and all other
22 aggrieved employees upon separation of employment. Defendants still have yet to pay Plaintiff
23 and all other aggrieved employees all final wages owed to them due to their failure to pay Plaintiff
24 and all other aggrieved employees for all minimum wages, overtime compensation, and
25 Defendants' failure to pay meal and rest period premium wages owed.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **(California Labor Code §§ 2698, *et seq.*)**

4 34. Plaintiff incorporates by reference and realleges each and every one of the
5 allegations contained in the preceding and foregoing paragraphs of this complaint, as though fully
6 set forth herein.

7 35. Pursuant to Labor Code section 2698, *et seq.*, Plaintiff seeks to recover all
8 applicable civil penalties and reasonable attorneys' fees and costs, permitted under PAGA through
9 a representative action on behalf of himself and all other aggrieved employees that work or
10 worked for Defendants during the relevant time period.

11 36. In accordance with *Arias v. Superior Court*, 46 Cal.4th 969 (2009), a representative
12 action is not subject to the formalities required of a class action and class certification of PAGA
13 claims is not required.

14 37. Plaintiff is an "aggrieved employee" within the meaning of Labor Code section
15 2699(c) because he was employed by Defendants during the applicable statutory period and
16 suffered one or more of the Labor Code violations, as alleged herein. Thus, Plaintiff is well suited
17 to represent the interests of all other aggrieved employees in in this PAGA representative action.

18 38. Pursuant to Labor Code section 2699(i), seventy-five percent (75%) of civil
19 penalties recovered by aggrieved employees shall be distributed to the Labor and Workforce
20 Development Agency (hereinafter "LWDA") for enforcement of labor laws and education of
21 employers and employees about their rights and responsibilities under this code, and twenty-five
22 percent (25%) shall be distributed to the aggrieved employees.

23 39. Plaintiff's representative action alleges violations of certain Labor Code sections
24 that are listed within Labor Code section 2699.5. Accordingly, Labor Code section 2699.3(a)
25 applies to this action, and Labor Code section 2699.3(b)-(c) do not apply.

26 40. On May 28, 2021, Plaintiff complied with Labor Code section 2699.3(a) by
27 electronically filing written notice with the LWDA and serving written notice, via certified mail,
28 upon the LWDA and Defendants regarding the specific provisions of the Labor Code alleged to

1 have been violated by Defendants and Plaintiff's intent to pursue civil penalties against
2 Defendants on behalf of himself and all other aggrieved employees pursuant to PAGA. Attached
3 hereto as **Exhibit A** is a true and correct copy of Plaintiff's notice letter.

4 41. Labor Code section 2699.3(a) provides in pertinent part that: "The agency shall
5 notify the employer and the aggrieved employee or representative by certified mail that it does not
6 intend to investigate the alleged violation within 60 calendar days of the postmark date of the
7 notice received... [u]pon receipt of that notice or if no notice is provided within 65 calendar days
8 of the postmark date of the notice given... the aggrieved employee may commence a civil action
9 pursuant to Section 2699." More than sixty-five calendar days have passed since Plaintiff served
10 notice upon the LWDA and Defendants, and the LWDA did not provide notice of its intent to
11 investigate Plaintiff's claims. Accordingly, Plaintiff exhausted his obligation to provide
12 administrative notice and is authorized to commence this representative action seeking civil
13 penalties on behalf of himself and all other aggrieved employees of Defendants.

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

20 43. Pursuant to Labor Code section 2699(f)(2), for all provisions of the Labor Code for
21 which a civil penalty is not specifically provided, there is established a civil penalty that imposes a
22 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
23 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
24 subsequent violation.

25 44. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff, on behalf of himself and
26 aggrieved employees, seeks applicable civil penalties for violations of Labor Code sections 201,
27 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 1199 during the statutory period as set
28 forth below:

1 a. For violations of Labor Code section 201, 202, 203, 226.7, 510, 512, 1194,
2 1197 1198, and 1199, Labor Code section 2699(f)(2) imposes a civil penalty of one hundred
3 dollars (\$100) for each aggrieved employee per pay period for each initial violation and two
4 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

5 b. For violations of Labor Code section 204, Labor Code section 210 imposes
6 a civil penalty of one hundred dollars (\$100) for each aggrieved employee for each initial violation
7 that was neither willful nor intentional, and two hundred dollars (\$200) for each aggrieved
8 employee, for each subsequent violation, regardless of whether the subsequent violation was
9 willful or intentional;

10 c. For violations of Labor Code section 226(a), Labor Code section 226.3
11 imposes a civil penalty, in addition to any other penalty provided by law, of two hundred fifty
12 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)
13 per aggrieved employee for each subsequent violation.

14 45. Defendants violated Labor Code sections 510, 1194, 1197, and 1198 by not paying
15 Plaintiff and aggrieved employees all wages owed for all hours worked for each pay period as a
16 result of Defendants' policy or practice of rounding the time worked by non-exempt employees in
17 Defendants' favor such that Plaintiff and other non-exempt employees were not paid for all time
18 actually worked. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to a
19 civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the
20 initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for
21 each subsequent violation.

22 46. Defendants violated Labor Code sections 510, 1194, 1197, 1198, and 1199 by not
23 paying Plaintiff and aggrieved employees all wages owed for all hours worked for each pay period
24 as a result of Defendants' policy or practice of failing to pay all overtime compensation based
25 upon the regular rate of pay by not taking into account all remuneration paid, including non-
26 discretionary bonuses, as alleged herein. Thus, pursuant to Labor Code section 2699(f)(2),
27 Defendants are subject to a civil penalty of one hundred dollars (\$100) for each aggrieved
28 employee per pay period for the initial violation, and two hundred dollars (\$200) for each

1 aggrieved employee per pay period for each subsequent violation.

2 47. California Labor Code section 1198 makes it illegal to employ an employee under
3 conditions of labor that are prohibited by the applicable wage order. Defendants have violated
4 Labor Code sections 1198 and by Wage Order 7-2001, section 14, by failing to provide aggrieved
5 employees with seats. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to
6 a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the
7 initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for
8 each subsequent violation.

9 48. Defendants violated Labor Code sections 226.7 and 512 by denying Plaintiff and
10 all other aggrieved employees an opportunity to take timely off-duty and uninterrupted thirty
11 minute meal periods for every five hours worked, including timely off-duty and uninterrupted
12 thirty minute long meal periods before the end of the fifth hour of work, and by failing to pay a
13 premium wage equivalent to an additional hour of pay at the regular rate of pay for each day a
14 compliant meal period was not provided. Thus, pursuant to Labor Code section 2699(f)(2),
15 Defendants are subject to a civil penalty of one hundred dollars (\$100) for each aggrieved
16 employee per pay period for the initial violation, and two hundred dollars (\$200) for each
17 aggrieved employee per pay period for each subsequent violation.

18 49. Defendants violated Labor Code sections 226.7 and 512 by denying Plaintiff and
19 all other aggrieved employees of Defendants an opportunity to take timely second off-duty and
20 uninterrupted thirty minute meal periods for every ten hours worked, including timely off-duty
21 and uninterrupted thirty minute long meal periods before the end of the tenth or twelfth hour of
22 work, and by failing to pay a premium wage equivalent to an additional hour of pay at the regular
23 rate of pay for each day a second compliant meal period was not provided. Thus, pursuant to
24 Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars
25 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
26 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

27 50. Defendants violated Labor Code section 226.7 by denying Plaintiff and all other
28 aggrieved employees of Defendants a ten minute off-duty rest period for every four hours worked,

1 or major fraction thereof, and by failing to provide a premium wage equivalent to an additional
2 hour of pay at the regular rate of pay for each workday that a compliant rest period was not
3 provided. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil
4 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
5 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
6 subsequent violation.

7 51. Defendants violated Labor Code section 226(a) by failing to provide Plaintiff and
8 aggrieved employees with accurate itemized wage statements correctly identifying, among other
9 things, the correct name of the employer, hours worked, wages earned, the correct amount of net
10 wages earned, and the correct amount of deductions that were paid or should have been paid.
11 Thus, pursuant to Labor Code sections 226.3 and 2699(a), Defendants, in addition to, and entirely
12 independent and apart from any other penalty, are subject to a civil penalty for violation Labor
13 Code section 226(a) in the amount of two hundred and fifty dollars (\$250) per aggrieved employee
14 per violation in an initial citation and one thousand dollars (\$1,000) per aggrieved employee for
15 each violation in a subsequent citation.

16 52. Defendants violated Labor Code sections 201, 202, and 203 by willfully failing to
17 timely pay Plaintiff and aggrieved employees all wages owed upon separation of employment by
18 failing to pay all minimum wages, overtime compensation, and Defendants' failure to pay meal
19 and rest period premium wages owed. Thus, pursuant to Labor Code section 2699(f)(2),
20 Defendants are subject to a civil penalty of one hundred dollars (\$100) for each aggrieved
21 employee per pay period for the initial violation of these sections, and two hundred dollars (\$200)
22 for each aggrieved employee per pay period for each subsequent violation.

23 53. At all material times, Defendants were Plaintiff and all other aggrieved employees'
24 employers, or persons acting on their behalf, within the meaning of Labor Code section 558, who
25 violated or caused to be violated, a section of Part 2, Chapter 1 of the Labor Code or any provision
26 regulating hours and days of work in the applicable IWC Wage Order and, as such, are subject to
27 civil penalties for each underpaid employee as set forth in Labor Code section 558. The civil
28 penalties provided for under Labor Code section 558 are in addition to any other civil penalty

1 provided by law.

2 54. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil
3 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
4 subsequent violation of Labor Code sections 510 and 1194 for each pay period for which Plaintiff
5 and all other aggrieved employees of Defendants were not paid all wages owed as a result of
6 Defendants' failure to pay wages owed for all overtime, as alleged herein.

7 55. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil
8 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
9 subsequent violation of Labor Code section 226.7 for each pay period for which Plaintiff and all
10 other aggrieved employees of Defendants were not provided with a compliant timely off-duty and
11 uninterrupted thirty minute meal period and/or ten minute long rest periods for every four hours
12 worked, or major fraction thereof, as alleged herein.

13 56. Defendants violated Labor Code section 1198 by failing to comply with the
14 maximum hours of work and the standards conditions of labor fixed by the IWC under the "Hours
15 and Days of Work", the "Meal Period", the "Rest Period" and "Record" sections of the applicable
16 IWC Wage Order, by failing to provide compliant meal periods, failing to pay meal periods
17 premium wages, failing to provide compliant rest periods, failing to pay rest period premium
18 wages, failing to keep and provide accurate records, and failing to timely pay owed wages upon
19 separation of employment, as alleged herein. Thus pursuant to Labor Code section 2699(f)(2),
20 Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for each
21 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
22 each aggrieved employee per pay period for each subsequent violation.

23 **PRAYER FOR RELIEF**

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

- 25 1. For all civil penalties authorized by Labor Code section 2698, *et seq.*;
- 26 2. For civil penalties under Labor Code section 226.3 in the amount two hundred fifty
27 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)
28 per aggrieved employee for each subsequent violation;

1 3. For civil penalties under Labor Code section 210 in the amount of one hundred
2 dollars (\$100.00) for each aggrieved employee for each initial violation that was neither willful
3 nor intentional, and two hundred dollars (\$200.00) for each aggrieved employee, plus twenty-five
4 percent (25%) of the amount unlawfully withheld from each aggrieved employee, for each
5 subsequent violation, regardless of whether the subsequent violation was willful or intentional;

6 4. For civil penalties under Labor Code section 2699(f), for Labor Code violations
7 without a specific civil penalty, in the amount of one hundred dollars (\$100.00) for each aggrieved
8 employee per pay period for each initial violation and two hundred dollars (\$200.00) for each
9 aggrieved employee per pay period for each subsequent violation;

10 5. For civil penalties under Labor Code section 558, as follows: (1) for an initial
11 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
12 employee was underpaid; (2) for each subsequent violation, one hundred dollars (\$100) for each
13 underpaid employee for each pay period for which the employee was underpaid;

14 6. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
15 section 2699(g)(1), or other applicable laws;

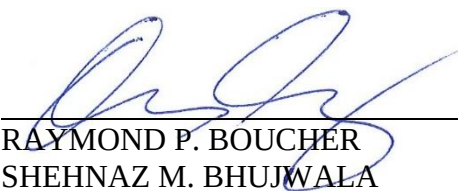
16 7. For pre-judgment and post-judgment interest as provided by law; and

17 8. For such additional relief as this Court may deem just and proper.
18

19 DATED: August 4, 2021

BOUCHER LLP

20
21 By:


22 RAYMOND P. BOUCHER
23 SHEHNAZ M. BHUJWALA
24 ALEXANDER GAMEZ

25 *Attorneys for Plaintiff Cristian Corona,*
26 *Aggrieved Employee of Defendants,*
27 *on Behalf of the State of California's*
28 *Labor and Workforce Development Agency*
for All Aggrieved Employees of Defendants

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DATED: August 4, 2021

By:

*Attorneys for Plaintiff Cristian Corona,
Aggrieved Employee of Defendants,
on Behalf of the State of California's
Labor and Workforce Development Agency
for All Aggrieved Employees of Defendants*

EXHIBIT A

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May 28, 2021

ELECTRONICALLY FILED

Attn: PAGA Administrator
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1515 Clay Street, Suite 801
Oakland, California 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Gemperle Egg Packing Co, Inc.
c/o Agent for Service of Process
Richard J. Gemperle
10218 Lander Ave
Turlock, CA 95380

Re: *Corona v. Gemperle Egg Packing Co. Inc., et al.*
Notice Regarding Private Attorneys General Act of 2004 Claim

To Whom It May Concern:

Pursuant to section 2699.3 of the California Labor Code Private Attorneys General Act of 2004 (“PAGA” or “the Act”) (Lab. Code § 2698 *et seq.*), this letter shall serve as written notice of claims for civil penalties that will be pursued by Mr. Cristian Corona as proxy for the Labor and Workforce Development Agency on behalf of all non-exempt aggrieved employees employed by Gemperle Egg Packing Co. Inc. (“Gemperle”) in California during the statutory period, against Gemperle.

Gemperle is an egg producing company headquartered in Turlock, California. Mr. Corona has been employed as a non-exempt employee in California from approximately October 2013 to October 12, 2020. Pursuant to California law, Gemperle has at all relevant times been Mr. Corona’s employer during the statutory period.

In her representative action, Mr. Corona will seek civil penalties pursuant to PAGA as a result of Gemperle’s failure to: (1) compensate for all hours worked (Lab. Code §§ 204, 223, 1194, 1197, 1198); (2) compensate for all overtime hours worked (Lab. Code § 510); (3) provide proper meal periods and/or premium pay for non-compliant meal periods (Lab. Code §§ 226.7, 512, 558, 1198, 1199); (4) provide proper rest periods and/or premium pay for non-compliant rest periods (Lab. Code §§ 226.7, 558, 1197, 1198, 1199); (5) provide suitable seating (Lab. Code section 1198

and Wage Order 4-2001, section 14); (6) furnish complete and accurate itemized wage statements (Lab. Code § 226(a)); and (7) timely pay all wages due within the time permitted upon separation of employment (Lab. Code §§ 201-203).

FAILURE TO PAY HOURLY AND OVERTIME WAGES

(Labor Code §§ 204, 510, 1194, 1197, 1198, and 2699)

Labor Code section 204 states that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

Pursuant to Labor Code section 510, non-exempt employees are entitled to 1.5 times their hourly rate of pay for any work performed in excess of 8 hours in a day or any work performed in excess of 40 hours per week, and twice their regular hourly rate for any work performed past 12 hours in one day or past 8 hours on the seventh consecutive day.

Labor Code section 1194(a) states, “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 1197 states, in pertinent part, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful.”

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Section 2 of the applicable Wage Order states that, “Hours worked means 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.”

In relevant part, Section 4 of the applicable Wage Order states that, “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission or otherwise.”

In conjunction, the provisions of the applicable Wage Order and Labor Code require employers to pay non-exempt employees no less than their agreed upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” when the employer knows or reasonably should know that employees are working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

Upon information and belief, during Mr. Corona's employment, Gemperle failed and fails to compensate him and aggrieved employees for all hours worked and overtime hours worked after eight hours in a day and/or after forty hours in a week due to Gemperle's policy and practice of rounding the time worked by non-exempt employees in Gemperle's favor such that Mr. Corona and other non-exempt employees were not paid for all time actually worked. For example, on June 16, 2020, Mr. Corona worked 9 hours and 33 minutes but was paid for 9 hours and 30 minutes, resulting in Mr. Corona being underpaid 3 minutes at his overtime rate.

Gemperle further failed and fails to pay Mr. Corona and aggrieved employees all overtime compensation based upon the appropriate regular rate of pay by not taking into account all remuneration paid, including non-discretionary bonuses earned by Mr. Corona and aggrieved employees

Accordingly, Mr. Corona, on behalf of himself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7, 512(a), 558, 1198, 2699, and the "Meal Periods" Section of the Applicable Wage Order)

Labor Code section 226.7(b) states, in pertinent part, "An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a meal period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

Labor Code section 512(a) states, in pertinent part, "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes... [a]n employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived."

Labor Code section 1198 states, in pertinent part, "The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

In relevant part, Section 2 of the applicable Wage Order states that, "Hours worked means 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."

Section 11 of the applicable Wage Order provides that:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on-duty" meal period and counted as time worked. An "on-duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employer's regular rate of compensation for each workday that the meal period is not provided.

Upon information and belief, Gemperle failed and fail to provide Mr. Corona and aggrieved employees with compliant thirty minute off-duty meal periods for work periods and failed to pay them premium wages at their regular rates of pay thereto by reason of its policy and practice of forcing employees to take late and short meal periods. Further Mr. Corona and aggrieved employees was not provided the opportunity to take a second meal period in instances where they worked over ten or twelve hours and were not paid a premium wage for these non-compliant meal periods.

Accordingly, Mr. Corona, on behalf of himself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE REST PERIODS

(Labor Code §§ 226.7, 1198, 2699, and the "Rest Periods" Section of the Applicable Wage Order)

Labor Code section 1198 states, in pertinent part, "The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 226.7(b) states, in pertinent part, "An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission."

Pursuant to *Augustus v. ABM Security Services, Inc.*, (2017) 2 Cal.5th 257, 260, “[d]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time.”

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a rest period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

Section 12 of the applicable Wage Order provides that:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensations for each workday that the rest period is not provided.

Upon information and belief, Gemperle’s policies and practices failed and fail to provide Mr. Corona and aggrieved employees with off-duty net rest periods of at least ten minutes for each four hours worked, or major fraction thereof, and failed and fail to pay them a premium wage at their regular rates of pay on workdays.

Accordingly, Mr. Corona, on behalf of himself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE SUITABLE SEATING

(Lab. Code section 1198 and Wage Order 7-2001, section 14))

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 14 of the applicable Wage Order provides that:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be

placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Upon information and belief, Gemperle failed to provide aggrieved employees with suitable seating during their employment as required by section 14 of the applicable Wage Order. In particular, packers perform common tasks which could be performed while seated and the location of the tasks to be performed made it feasible to do so while seated. Yet, Gemperle failed and fails to provide them with suitable seating.

Accordingly, Mr. Corona, on behalf of himself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and 2699)

Labor Code section 226(a) requires an employer to provide an employee with an accurate itemized wage statement that shows: (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 basis; (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 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; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate by the employee.

For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty on any employer that violates section 226(a) in the amount of \$250.00 per employee per violation in an initial citation and \$1,000.00 per employee for each subsequent violation. The civil penalties provided for in Labor Code section 226.3 are in addition to any other penalty provided by law.

Mr. Corona and aggrieved employees were and continue to be furnished with inaccurate itemized wage statements during the statutory period. For example, Mr. Corona was furnished with wage statements that did not identify Gemperle Egg Packing Co, Inc. as the employer. The wage statements are also inaccurate because they show the incorrect total hours worked by the employees. For example, the wage statements include vacation time into the total worked hours. Additionally, as a result of alleged violations discussed above, Gemperle furnished wage statements that failed to correctly show, among other items: (1) the incorrect hours worked as a result of the rounding practice, (2) gross wages earned, (3) all deductions, and (4) net wages earned.

Accordingly, Mr. Corona on behalf of himself and other aggrieved employees, will seek to recover available civil penalties for violations of Labor Code 226(a).

FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT
(Labor Code §§ 201, 202, 203, and 2699)

Labor Code section 201 states, in pertinent part, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code section 202 states, in pertinent part, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203 provides that an employee’s wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Upon information and belief, Gemperle willfully failed and fails to provide aggrieved employees all wages due and owed upon separation of employment. By furnishing aggrieved employees with a final check that failed to include all earned and owed wages including overtime compensation and meal and rest period premiums – as described above, Gemperle violated Labor Code sections 201 or 202.

Accordingly, Mr. Corona on behalf of aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code § 558)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days in any IWC Wage Order, to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid, and \$100 for each subsequent violation.

As set forth above, Gemperle failed to provide Mr. Corona and aggrieved employees compliant meal and rest periods and failed to pay premium wages owed and failed to pay all overtime compensation owed. Accordingly, Mr. Corona, on behalf of aggrieved employees, will seek to recover civil penalties under Labor Code section 558.

CONCLUSION

The allegations set forth herein are supported by, among other things, records and documents from Mr. Corona's employment with Gemperle, including timesheets, paystubs, and Mr. Corona's confirmation of Gemperle's unlawful practices and policies. As a result of the foregoing violations, Mr. Corona is entitled to file a Complaint and invoke the protections of the Act. Mr. Corona has placed Gemperle on notice by mailing a certified copy of this notice to its corporate headquarters and/or authorized agents.

Very truly yours,

BOUCHER LLP

By: _____

Alexander Gamez, Esq.