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on behalf of himself and all other aggrieved employees

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 MERCED COUNTY – OLD MERCED COURTHOUSE
11

12 EZEQUIEL CONTRERAS SANDOVAL, on
behalf of himself and all other aggrieved
13 employees,

14
15 PLAINTIFF,

16 vs.

17 DAVID & CAROLYN SANTOS FARM
MANAGEMENT, LLC, a California limited
18 liability company; DAVID & CAROLYN
SANTOS FARMS, LLC, a California limited
19 liability company; DAVID & CAROLYN
SANTOS FARMS, LP, a limited partnership;
20 DAVID SANTOS FARMING, a business entity
form unknown; DAVID SANTOS, individually
21 and as trustee of the DAVID F. AND
CAROLYN J. SANTOS 2007 TRUST 720
22 Jefferson, Los Banos, CA 93635; CAROLYN
SANTOS, individually and as trustee of the
23 DAVID F. AND CAROLYN J. SANTOS 2007
TRUST 720 Jefferson, Los Banos, CA 93635;
24 and DOES 1 through 100, inclusive,
25

26 DEFENDANTS.
27

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Merced Superior Court
9/21/2021 1:30 PM
Amanda Toste
Clerk of the Superior Court
By: Nengsy Moua, Deputy

CASE NO.: 21CV-03307

REPRESENTATIVE ACTION

COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS'
GENERAL ACT OF 2004, CALIFORNIA
LABOR CODE § 2698 *et seq.*

1 PLAINTIFF Ezequiel Contreras Sandoval (“PLAINTIFF”), on behalf of himself and all other
2 aggrieved employees alleges as follows:

3 **INTRODUCTION**

4 PLAINTIFF brings this action on behalf of himself and all other aggrieved employees of
5 Defendants DAVID & CAROLYN SANTOS FARM MANAGEMENT, LLC; DAVID & CAROLYN
6 SANTOS FARMS, LLC; DAVID & CAROLYN SANTOS FARMS, LP; DAVID SANTOS
7 FARMING; DAVID SANTOS, individually and as trustee of the DAVID F. AND CAROLYN J.
8 SANTOS 2007 TRUST 720 Jefferson, Los Banos, CA 93635; CAROLYN SANTOS, individually and
9 as trustee of the DAVID F. AND CAROLYN J. SANTOS 2007 TRUST 720 Jefferson, Los Banos, CA
10 93635; and DOES 1 through 100, inclusive (collectively, “DEFENDANTS”) to recover civil penalties
11 arising from unpaid wages earned and due, including but not limited to unpaid and unlawfully calculated
12 overtime compensation, unlawful meal and rest break policies and practices, failure to pay all wages
13 due to discharged or quitting employees, failure to maintain required records, failure to provide accurate
14 itemized wage statements, and failure to timely pay wages during employment.

15 **THE PARTIES**

16 1. PLAINTIFF is a resident of the State of California. At all times relevant to this action,
17 PLAINTIFF was employed by DEFENDANTS in the County of Merced, State of California as an
18 hourly, non-exempt employee.

19 2. PLAINTIFF is informed and believes, and thereon alleges, that Defendant DAVID &
20 CAROLYN SANTOS FARM MANAGEMENT, LLC (“DAVID & CAROLYN SANTOS FARM
21 MANAGEMENT”) is, and all times relevant to this action was, a limited liability company organized
22 and existing under the laws of the State of California. PLAINTIFF is further informed and believes,
23 and based thereon alleges, that Defendant DAVID & CAROLYN SANTOS FARM MANAGEMENT
24 is authorized to transact and conduct business in the State of California and does transact and conduct
25 business in the County of Merced, State of California. Further, DAVID & CAROLYN SANTOS FARM
26 MANAGEMENT maintains grounds, facilities, and offices in the County of Merced, State of California.

4. PLAINTIFF is informed and believes, and thereon alleges, that Defendant DAVID & CAROLYN SANTOS FARMS, LP, a limited partnership, does business in the County of Merced, State of California.

5. PLAINTIFF is informed and believes, and thereon alleges, that Defendant DAVID SANTOS FARMING, a business entity form unknown, does business in the County of Merced, State of California. PLAINTIFF is informed and believes, and based thereon alleges, that DAVID SANTOS FARMING is not registered as a fictitious business name in the County of Merced, State of California.

6. Defendants DAVID & CAROLYN SANTOS FARM MANAGEMENT, LLC; DAVID & CAROLYN SANTOS FARMS, LLC; DAVID & CAROLYN SANTOS FARMS, LP; and DAVID SANTOS FARMING are collectively referred to as the “COMPANIES”.

7. PLAINTIFF is informed and believes, and thereon alleges, that Defendant DAVID SANTOS, an individual, is an owner and member of COMPANIES, and Trustee of the David F. and Carolyn J. Santos 2007 Trust 720 Jefferson, Los Banos, CA 93635.

8. PLAINTIFF is informed and believes, and thereon alleges, that Defendant CAROLYN SANTOS, an individual, is an owner and member of COMPANIES, and Trustee of the David F. and Carolyn J. Santos 2007 Trust 720 Jefferson, Los Banos, CA 93635.

9. At this time, the true names and capacities of DOES 1 through 100, inclusive, are unknown to PLAINTIFF, and PLAINTIFF therefore sues such DEFENDANTS under fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated as a DOE is

1 in some manner responsible for the occurrences alleged herein, and that PLAINTIFF and other aggrieved
2 employees' injuries and damages were proximately caused by the conduct of said DOE defendants.
3 PLAINTIFF will seek leave of the court to amend this Complaint to allege the true names and capacities
4 of said DOE defendants when such information is ascertained.

5 10. PLAINTIFF is informed and believes, and based thereon alleges, that at all relevant
6 times, DEFENDANTS were joint employers of PLAINTIFF and other aggrieved employees.
7 PLAINTIFF is informed and believes, and thereon alleges, that at all times relevant to this action,
8 DEFENDANTS were the alter egos, predecessors, divisions, affiliates, integrated enterprises, joint
9 employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners,
10 joint venturers, and/or guarantors, actual or ostensible, of each other. Each defendant was dominated
11 by his, her, or its codefendants, and each was the alter ego of the other.

12 11. PLAINTIFF is informed and believes, and based thereon alleges, that in perpetrating the
13 acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in
14 furtherance of, their policies and practices of not paying PLAINTIFF and other aggrieved employees all
15 wages earned and due, through methods, practices, and schemes which include, but are not limited to:
16 failing to pay overtime premiums; failing to provide rest and meal periods; failing to properly maintain
17 records; failing to provide accurate itemized statements for each pay period; failing to timely pay wages
18 during employment; and requiring, permitting, or suffering the employees to work off the clock, in
19 violation of the California Labor Code and applicable Industrial Welfare Commission ("IWC") Wage
20 Order(s).

21 12. PLAINTIFF is informed and believes, and thereon alleges, that each and every one of
22 the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,
23 each acting as agents and/or employees, and/or under the direction and control of, each of the other
24 DEFENDANTS, and that said acts and failures to act were within the course and scope of said agency,
25 employment, and/or direction and control.

26 13. PLAINTIFF is informed and believes, and based thereon alleges, that in accordance with
27 Labor Code Section 558.1, DEFENDANTS and any person acting on behalf of DEFENDANTS are

1 liable for violating, or causing to violate, any provision regulating minimum wages or hours and days
2 of work in any order of the Industrial Welfare Commission, or Labor Code Sections 203, 226, 226.7,
3 1193.6, or 1194.

4 **JURISDICTION AND VENUE**

5 14. The Superior Court of the State of California has jurisdiction in this matter because
6 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do business in
7 California and regularly conduct business in the State of California.

8 15. No federal question is at issue because the claims are based exclusively on California
9 state law.

10 16. Venue is proper in this judicial district and the County of Merced, California because
11 among other things, PLAINTIFF and the other aggrieved employees were employed and performed
12 work for DEFENDANTS in the County of Merced; DEFENDANTS maintain grounds, facilities, and
13 offices, and transact business in the County of Merced; DEFENDANTS' unlawful policies, procedures,
14 and practices, which are the subject of this action were applied to PLAINTIFF and other aggrieved
15 employees in the County of Merced; and DEFENDANTS' unlawful acts and omissions occurred in the
16 County of Merced.

17 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

18 17. At all relevant times, DEFENDANTS owned and operated farming business(es) and
19 operations and employed PLAINTIFF as an hourly non-exempt farm worker. PLAINTIFF was
20 employed by DEFENDANTS from approximately June 2016 to June 17, 2020.

21 18. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code
22 Sections 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current and former
23 non-exempt aggrieved employees of DEFENDANTS in the State of California at any time within the
24 period beginning one (1) year and sixty-five (65) days prior to the filing of this action and ending at the
25 time this action settles or proceeds to final judgment (the "PAGA PENALTY PERIOD").

26 19. In accordance with Labor Code Section 2699.3, on or about June 10, 2021, PLAINTIFF
27 gave written notice to the California Labor and Workforce Development Agency ("LWDA"), by filing

1 a PAGA Notice online, a copy of which was sent by certified mail to DEFENDANTS notifying them of
2 the specific provisions of the Labor Code and IWC Wage Order(s) alleged to have been violated,
3 including the facts and theories to support the alleged violations. PLAINTIFF’S PAGA Notice was sent
4 by certified mail to DEFENDANTS on or about June 10, 2021.

5 20. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
6 violations within sixty-five (65) calendar days of the postmark date of PLAINTIFF’S PAGA Notice.
7 Since PLAINTIFF has waited more than sixty-five (65) days from the June 10, 2021 postmark date of
8 PLAINTIFF’s PAGA Notice before filing this Civil Action, PLAINTIFF has complied with all of the
9 requirements in Labor Code Section 2699.3 to commence a representative action under the PAGA.

10 **FACTUAL ALLEGATIONS**

11 **Failure to Provide Complaint Meal Periods**

12 **(Labor Code §§ 226.7, 512; IWC Wage Order No. 14, § 11)**

13 21. Labor Code Section 512 provides in relevant part, “An employer shall not employ an
14 employee for a work period of more than five hours per day without providing the employee with a meal
15 period of not less than 30 minutes, except that if the total work period per day of the employee is no
16 more than six hours, the meal period may be waived by mutual consent of both the employer and
17 employee. An employer shall not employ an employee for a work period of more than 10 hours per day
18 without providing the employee with a second meal period of not less than 30 minutes, except that if the
19 total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent
20 of the employer and the employee only if the first meal period was not waived.”

21 22. IWC Wage Order 14 § 11 states, “(A) An employer may not employ an employee for a
22 work period of more than five (5) hours without providing the employee with a meal period of not less
23 than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s
24 work the meal period may be waived by mutual consent of employer and employee. Unless the employee
25 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty”
26 meal period and counted as time worked. An “on duty” meal period shall be permitted only when the
27 nature of the work prevents an employee from being relieved of all duty and when by written agreement

1 between the parties an on-the-job paid meal period is agreed to. (B) An employer may not employ an
2 employee for a work period of more than ten (10) hours per day without providing the employee with a
3 second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12
4 hours, the second meal period may be waived by mutual consent of the employer and the employee only
5 if the first meal period was not waived.”

6 23. Under California law, when an employee works for a work period of more than five (5)
7 hours, a meal period must be provided no later than the end of the employee’s fifth hour of work, *i.e.*,
8 no later than the start of the employee’s sixth hour of work. When an employee works for a period of
9 more than 10 hours, a second meal period must be provided no later than the end of the employee’s tenth
10 hour of work, *i.e.*, no later than the start of the employee’s eleventh hour of work. *See Brinker*
11 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).

12 24. Labor Code Section 226.7, subdivision (a) states, “An employer shall not require an
13 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
14 or applicable regulation, standard, or order of the Industrial Welfare Commission”

15 25. During the PAGA PENALTY PERIOD, as part of DEFENDANTS’ illegal policies,
16 procedures, and practices, DEFENDANTS failed to provide timely, compliant, off-duty meal periods to
17 PLAINTIFF and other aggrieved employees under Labor Code Sections 226.7 and 512 and IWC Order
18 No. 14-2001, § 11 and otherwise required, suffered or permitted PLAINTIFF and other aggrieved
19 employees to take less than 30-minute meal periods, or to work through them.

20 26. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
21 PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to meal period
22 violations.

23 27. DEFENDANTS further violated Labor Code Sections 226.7 and 512 and IWC Wage
24 Order No. 14-2001, § 11 by failing to compensate PLAINTIFF and other aggrieved employees who
25 were not provided with a meal period, in accordance with the applicable IWC Wage Order, one (1)
26 additional hour of compensation at each employee’s regular rate of pay for each workday that a
27 complaint meal period was not provided.

Failure to Provide Compliant Rest Periods**(Labor Code §§ 226.7; IWC Wage Order No. 14-2001, § 12)**

28. At all relevant times, as part of DEFENDANTS' illegal policies, procedures, and practices to deprive their current and former non-exempt employees all wages earned and due, DEFENDANTS failed to provide compliant rest periods to PLAINTIFF and other aggrieved employees as required pursuant to Labor Code Section 226.7, and IWC Wage Order No. 14-2001, § 12.

29. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to rest break violations.

30. DEFENDANTS further violated Labor Code Section 226.7 and IWC Wage Order No. 14-2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were not provided with a compliant rest period, in accordance with the applicable IWC Wage Order, one (1) additional hour of compensation at each employee's regular rate of pay for each workday that a compliant rest period was not provided.

Failure to Pay Overtime Wages**(Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 14-2001, § 3)**

31. Under Labor Code Sections 510 and 1194 and IWC Wage Order No. 14-2001, § 3, DEFENDANTS are required to compensate PLAINTIFF and other aggrieved employees for all overtime which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of ten (10) hours per day and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of eight (8) on the seventh (7th) day of work in the workweek.

32. Further, all persons employed in agricultural occupations are entitled to overtime pay as set forth in IWC Wage Order No. 14, § 3 which provides the following overtime schedule for employers of more than 25 employees: (a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over

34. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD, DEFENDANTS employed more than 25 employees.

35. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD, DEFENDANTS failed to compensate PLAINTIFF and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by Labor Code Sections 510, 1194, and IWC Wage Order No. 14-2001, § 3; requiring, suffering, or permitting PLAINTIFF and other aggrieved employees to work off the clock; requiring, permitting, or suffering PLAINTIFF and other aggrieved employees to work through meal breaks; illegally and inaccurately recording time in which PLAINTIFF and other aggrieved employees worked; failing to properly maintain PLAINTIFF's and other aggrieved

1 employees' records; failing to provide accurate itemized wage statements to PLAINTIFF for each pay
2 period; and other methods or practices to be discovered.

3 36. DEFENDANTS have knowingly and willfully refused to perform their obligations to
4 compensate PLAINTIFF and other aggrieved employees for all wages earned and all hours worked in
5 violation of Labor Code Sections 510, 1194 and 1198 and IWC Wage Order No. 14-2001, § 3.

6 **Failure to Pay Minimum Wages**

7 **(Labor Code §§ 1194, 1197; IWC Wage Order No. 14-2001, § 4)**

8 37. Under Labor Code Sections 1194 and 1197 and IWC Wage Order No. 14-2001, § 4,
9 payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
10 period is unlawful.

11 38. During the PAGA PENALTY PERIOD and in violation of Labor Code Sections 1194
12 and 1197 and IWC Wage Order No. 14-2001, § 4, DEFENDANTS failed to pay PLAINTIFF and other
13 aggrieved employees the applicable minimum wages for all hours worked in a payroll period by, among
14 other things: requiring, suffering, or permitting PLAINTIFF and other aggrieved employees to work off
15 the clock; requiring, suffering, or permitting PLAINTIFF and other aggrieved employees to work
16 through meal breaks; illegally and inaccurately recording time in which PLAINTIFF and other
17 aggrieved employees worked; failing to properly maintain PLAINTIFF's and other aggrieved
18 employees' records; failing to provide accurate itemized wage statements to PLAINTIFF and other
19 aggrieved employees for each pay period; and other methods or practices to be discovered.

20 **Failure to Timely Pay Wages During Employment**

21 **(Labor Code § 204)**

22 39. Under Labor Code Section 204, for all labor performed between the 1st and 15th days of
23 any calendar month, DEFENDANTS are required to pay their nonexempt employees between the 16th
24 and 26th day of the month during which the labor was performed. Labor Code Section 204 provides that
25 for all labor performed between the 16th and 26th days of any calendar month, DEFENDANTS are
26 required to pay their nonexempt employees between the 1st and 10th day of the following calendar
27 month.

1 40. Labor Code Section 204 further provides that all wages earned for labor in excess of the
2 normal work period shall be paid no later than the payday of the next regular payroll period.

3 41. During the PAGA PENALTY PERIOD, DEFENDANTS knowingly and willfully failed
4 to timely pay PLAINTIFF and other aggrieved employees all the wages for labor performed by the next
5 regular payroll period as required by Labor Code Section 204.

6 **Failure to Pay All Wages Due Upon Separation of Employment**
7 **(Labor Code §§ 201, 202, 203)**

8 42. Under Labor Code Sections 201, 202 and 203, DEFENDANTS are required to pay all
9 earned and unpaid wages to an employee who is discharged. Labor Code Section 201 provides that if
10 an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge
11 are due and payable immediately.

12 43. Under Labor Code Section 202, DEFENDANTS are required to pay all accrued wages
13 due to an employee no later than 72 hours after the employee quits, unless the employee provided 72
14 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or
15 wages at the time of quitting.

16 44. Labor Code Section 203 provides that if an employer willfully fails to pay, in accordance
17 with Labor Code sections 201 and 202, any wages of an employee who is discharged or who quits, the
18 employer is liable for waiting time penalties in the form of continued wages to the employee for up to
19 thirty (30) days.

20 45. During the PAGA PENALTY PERIOD and in violation of Labor Code Sections 201 and
21 202, DEFENDANTS willfully failed to timely pay accrued wages and other compensation to
22 PLAINTIFF and other aggrieved employees who were discharged or who quit.

23 **Failure to Furnish Accurate Itemized Wage Statements**
24 **(Labor Code § 226(a); IWC Wage Order No. 14-2001, § 7)**

25 46. During the PAGA PENALTY PERIOD, DEFENDANTS routinely failed and continue
26 to fail to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage
27 statements in writing showing each employee's gross wages earned, total hours worked, the number of

1 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all
2 deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the
3 name of the employee and only the last four digits of his or her social security number or employee
4 identification number, the name and address of the legal entity or entities employing PLAINTIFF and
5 other aggrieved employees, and all applicable hourly rates in effect during each pay period and the
6 corresponding number of hours worked at each hourly rate, in violation of Labor Code Section 226,
7 subdivision (a) and IWC Wage Order No. 14-2001 § 7.

8 47. During the PAGA PENALTY PERIOD, and as a result of DEFENDANTS' unlawful
9 policies and practices and failure to pay all earned wages, DEFENDANTS knowingly and intentionally
10 failed to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage
11 statements in accordance with Labor Code Section 226, subdivision (a). Among other things, the wage
12 statements issued by DEFENDANTS failed to include the name and address of the legal entity
13 employing PLAINTIFF and other aggrieved employees. The wage statements issued by
14 DEFENDANTS identify "David Santos Farming" an entity of unknown legal form or existence as the
15 employing entity. PLAINTIFF is informed and believes and thereon alleges that "DAVID SANTOS
16 FARMING" is not registered with the California Secretary of State. PLAINTIFF is further informed
17 and believes and thereon alleges that "DAVID SANTOS FARMING" is not registered as a fictitious
18 business name or entity in the County of Merced, State of California.

19 **Failure to Maintain Accurate Records**

20 **(Labor Code §§ 226(a), 1174(d); IWC Wage Order No. 14-2001, § 7)**

21 48. During the PAGA PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
22 policies and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned and
23 due, DEFENDANTS knowingly and intentionally failed to maintain records as required under Labor
24 Code Sections 226, subdivision (a) and 1174, subdivision (d) and IWC Wage Order No. 14-2001, § 7,
25 including but not limited to the following records: total daily hours worked by each employee; applicable
26 rates of pay; all deductions; meal periods; time records showing when each employee begins and ends
27 each work period; and accurate itemized statements.

Failure to Provide Day of Rest

(Labor Code §§ 551, 552, *et seq.*)

49. California Labor Code Section 551 provides that “[e]very person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Labor Code Section 552 further provides, “[n]o employer of labor shall cause his employees to work more than six days in seven.”

50. During the PAGA PENALTY PERIOD, DEFENDANTS deprived PLAINTIFF and other aggrieved employees a day of rest as required pursuant to Labor Code Sections 551 and 552.

51. PLAINTIFF and aggrieved employees had been available and ready to receive days of rests owed.

52. DEFENDANTS’ failure to provide days of rest was willful because they had knowledge of the illegality of failing to provide days of rest and intentionally failed to do as required by law.

Failure to Reimburse Business Expenses

(Labor Code § 2802)

53. California Labor Code Section 2802 requires an employer to indemnify an employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.

54. During the PAGA PENALTY PERIOD, PLAINTIFF and other aggrieved employees incurred necessary business expenses and costs that were not reimbursed by DEFENDANTS.

55. PLAINTIFF, and other aggrieved employees, used their personal cell phone to communicate with DEFENDANTS throughout their employment which they were not reimbursed for by DEFENDANTS.

56. DEFENDANTS failed to indemnify PLAINTIFF, and other aggrieved employees, for any of the above-listed incurred business expenses thereby violating Labor Code Section 2802. PLAINTIFF, and other aggrieved employees, are entitled to indemnification from DEFENDANTS for these expenses in accordance with Labor Code Section 2802, who do not have a policy or practice in place for reimbursement of business expenses incurred by PLAINTIFF and other employees.

1 57. DEFENDANTS had an obligation to reimburse PLAINTIFF, and other aggrieved
2 employees, for business related costs incurred for their cell phones and because of their failure to do so,
3 DEFENDANTS are subject to penalties, interest, and attorneys' fees. LABOR CODE § 2802 (b)-(d).

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF THE PRIVATE ATTORNEYS' GENERAL ACT**

6 **(Labor Code §§ 2698 et seq.)**

7 **(AGAINST ALL DEFENDANTS)**

8 58. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of
9 the allegations in paragraphs 1 through 57, above.

10 59. PLAINTIFF is an "aggrieved employee" within the meaning of Labor Code Section
11 2699, subdivision (c), and a proper representative to bring a civil action on behalf of himself and other
12 current and former non-exempt employees of DEFENDANTS under the procedures specified in Labor
13 Code sections 2699.3, because PLAINTIFF was employed by DEFENDANTS and one or more of the
14 alleged Labor Code violations was committed against PLAINTIFF during the PAGA PENALTY
15 PERIOD.

16 60. PLAINTIFF seeks to recover civil penalties through a representative action permitted by
17 PAGA.

18 61. Pursuant to Labor Code Sections 2698 through 2699.5, PLAINTIFF seeks to recover
19 civil penalties from DEFENDANTS in a representative action for the violations set forth above which
20 include, but are not limited to, violations of Labor Code Sections 201, 202, 203, 204, 226, subdivision
21 (a), 226.7, 510, 512, 551, 552, 1174, subdivision (d), 1194, 1194.2, 1197, and 1198.

22 62. Under Labor Code Section 2699, subdivision (a), PLAINTIFF seeks civil penalties based
23 on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is specifically
24 provided which include, but are not limited to, the following:

- 25 a. Under Labor Code Section 210, DEFENDANTS are subject to a civil penalty in the
26 amount of one hundred dollars (\$100.00) for the initial violation and two hundred dollars
27

1 (\$200.00) per employee for violations in subsequent pay periods for violations of Labor
2 Code Section 204;

3 b. Under Labor Code Section 226.3, DEFENDANTS are subject to a civil penalty in the
4 amount of two hundred and fifty dollars (\$250.00) per aggrieved employee for the initial
5 pay period where a violation occurs and one thousand dollars (\$1,000.00) per aggrieved
6 employee for violations in subsequent pay periods for violations of Labor Code Section
7 226, subdivision (a);

8 c. Under Labor Code Section 558, subdivision (a), “[a]ny employer or other person acting
9 on behalf of an employer who violates, or causes to be violated, a Section of this chapter
10 or any provision regulating hours and days of work in any order of the Industrial Welfare
11 Commission,” including Labor Code Sections 510 and 512, shall be subject to a civil
12 penalty, in addition to any other penalty provided by law, of fifty dollars (\$50.00) for
13 initial violations for each employee for each pay period for which the employee was
14 underpaid and one hundred dollars (\$100.00) for each subsequent violation for each
15 employee for each pay period for which the employee was underpaid.

16 d. Under Labor Code Section 1197.1, an employer who pays or causes to be paid to any
17 employee a wage less than the minimum fixed by an order of the commission, shall be
18 subject to a civil penalty as follows: for any initial violation that is intentionally
19 committed, one hundred dollars (\$100.00) for each underpaid employee for each pay
20 period for which the employee is underpaid; and for each subsequent violation of the
21 same offense, two hundred fifty dollars (\$250.00) for each underpaid employee for each
22 pay period for which the employee is underpaid regardless of whether or not the initial
23 violation was intentionally committed; and

24 e. Under Labor Code Section 1174.5, for violations of Labor Code Section 1174,
25 subdivision (d), DEFENDANTS are subject to a civil penalty of five hundred dollars
26 (\$500.00).

63. PLAINTIFF further seeks civil penalties based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is not specifically provided. Labor Code Section 2699, subdivision (f) provides that for all Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties apply: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

64. PLAINTIFF seeks such civil penalties in accordance with Labor Code Section 2699, subdivision (f) based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to Labor Code Sections 201, 202, 203, 226.7, 551, 552, 1194, 1197, and 1198.

65. PLAINTIFF further seeks reasonable attorneys' fees and costs as allowed by law including under Labor Code Section 2699, subdivision (g)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, individually and on behalf of all other aggrieved employees, prays for relief against DEFENDANTS, and each of them jointly and severally, as follows:

1. For civil penalties according to proof and all penalties authorized under the PAGA including under Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2699, subdivisions (a) and (f);
2. For interest at the legal rate as allowed by law including pursuant to Labor Code Sections 218.6, 1194, Civil Code Sections 3287, 3288, 3289, and any other applicable provision providing for prejudgment interest;
3. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor Code Section 2699, subdivision (g) and any other applicable provisions providing for attorneys' fees and costs; and

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4. For such further and additional relief as allowed by law or which the Court deems just and proper.

DATED: September 21, 2021

Respectfully submitted,
PROXY LAW FIRM LLP



Rana Nader
Hengameh S. Safaei
Attorneys for Plaintiff EZEQUIEL
CONTRERAS SANDOVAL on behalf of
himself and all other aggrieved employees