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County of Santa Barbara  
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Attorneys for Plaintiffs, RAQUEL PINEDA SALTO  
And LAURA GARZIA, on behalf of themselves  
and all others similarly situated

No Summons Filed

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA**

RAQUEL PINEDA SALTO, an individual,  
and LAURA GARZIA, an individual, on  
behalf of all themselves and all others  
similarly situated,

Plaintiffs,

v.

DESTINY FARMS, LLC., a California limited  
liability company; DURANT HARVESTING,  
INC., a California corporation; DURANT  
HARVESTING LLC, a California limited  
liability company; and DOES 1 through 100,  
inclusive,

Defendants.

CASE NO.: 21CV04529

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

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO INDEMNIFY;
8. UNFAIR COMPETITION;
9. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (2004) FOR VIOLATIONS OF LABOR CODE SECTIONS 210, 226.3, 558, 1174.5, 1197.1, AND 2699, *et seq.*

**DEMAND FOR JURY TRIAL**

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff RAQUEL PINEDA SALTO (“MS. PINEDA”), and LAURA GARZIA (“MS. GARZIA” and together with MS. PINEDA, “Plaintiffs”) on behalf of themselves and all others similarly situated, and allege as follows:

## **GENERAL ALLEGATIONS**

### **INTRODUCTION**

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against DESTINY FARMS, LLC, and any of its respective subsidiaries or affiliated companies within the State of California (“DESTINY”), DURANT HARVESTING, LLC, and any of its respective subsidiaries or affiliated companies within the State of California (“DHL”) and DURANT HARVESTING INC., and any of its respective subsidiaries or affiliated companies within the State of California (“DHI” and DESTINY, with DOES 1 through 100, as further defined below, “Defendants”) on behalf of Plaintiffs and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants, and any of their respective subsidiaries or affiliated companies within the State of California, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiffs and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for violations of the Labor Code, including but not limited to, failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code section 2802, on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

### **PARTIES**

#### **A. Plaintiff**

3. Plaintiff MS. PINEDA is a resident of the State of California. At all relevant times herein, MS. PINEDA is informed and believes, and based thereon alleges that Defendants employed

1 Plaintiff MS. PINEDA as a non-exempt employee, with duties that included, but were not limited  
2 to, planting, and loading/unloading plant containers. MS. PINEDA is informed and believes, and  
3 based thereon alleges that she worked for Defendants from approximately May of 2018 through  
4 approximately November of 2020.

5 4. Plaintiff MS. GARZIA is a resident of the State of California. At all relevant times  
6 herein, MS. GARZIA is informed and believes, and based thereon alleges that Defendants employed  
7 Plaintiff MS. GARZIA as a non-exempt employee, with duties that included, but were not limited  
8 to, loading and unloading machines with agricultural products. MS. GARZIA is informed and  
9 believes, and based thereon alleges that she worked for Defendants from approximately May of  
10 2018 through approximately November of 2020.

11 **B. Defendants**

12 5. Plaintiffs are informed and believe and based thereon allege that defendant  
13 DESTINY is, and at all times relevant hereto was, a limited liability company organized and existing  
14 under and by virtue of the laws of the State of California and doing business in the County of Santa  
15 Barbara, State of California. Plaintiffs are informed and believe and based thereon allege that  
16 DESTINY is a Client Employer within the meaning of Labor Code section 2810.3, who obtained or  
17 was provided workers to perform labor within its usual course of business from DHI and DHL, a  
18 labor contractor.

19 6. Plaintiffs are informed and believe and based thereon allege that that defendant DHI  
20 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of  
21 the laws of the State of California and doing business in the County of Santa Barbara, State of  
22 California. Plaintiffs are informed and believe and based thereon allege that that DHI is a Labor  
23 Contractor within the meaning of Labor Code section 2810.3, who supplied, either with or without  
24 a contract, DESTINY, a Client Employer, with workers to perform labor within its usual course of  
25 business.

26 7. Plaintiffs are informed and believe and based thereon allege that that defendant DHL  
27 is, and at all times relevant hereto was, a limited liability company organized and existing under and  
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1 by virtue of the laws of the State of California and doing business in the County of Santa Barbara,  
2 State of California. Plaintiffs are informed and believe and based thereon allege that that DHL is a  
3 Labor Contractor within the meaning of Labor Code section 2810.3, who supplied, either with or  
4 without a contract, DESTINY, a Client Employer, with workers to perform labor within its usual  
5 course of business

6 8. The true names and capacities, whether individual, corporate, associate, or otherwise,  
7 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,  
8 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.  
9 Plaintiffs are informed and believe and based thereon allege that each of the defendants designated  
10 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.  
11 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of  
12 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is  
13 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent  
14 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or  
15 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the  
16 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall  
17 include DESTINY, DHI, DHL, and any of their parent, subsidiary, or affiliated companies within  
18 the State of California, as well as DOES 1 through 100 identified herein.

19 **JOINT LIABILITY ALLEGATIONS**

20 9. Plaintiffs are informed and believe and based thereon allege that all the times  
21 mentioned herein, each of the Defendants was the agent, principal, employee, employer,  
22 representative, joint venture or co-conspirator of each of the other defendants, either actually or  
23 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,  
24 employment, joint venture, and conspiracy.

25 10. All of the acts and conduct described herein of each and every corporate defendant  
26 was duly authorized, ordered, and directed by the respective and collective defendant corporate  
27 employers, and the officers and management-level employees of said corporate employers. In  
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1 addition thereto, said corporate employers participated in the aforementioned acts and conduct of  
2 their said employees, agents, and representatives, and each of them; and upon completion of the  
3 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant  
4 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,  
5 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the  
6 aforementioned corporate employees, agents and representatives.

7 11. As a result of the aforementioned facts, Plaintiff is informed and believes, and based  
8 thereon alleges that Defendants, and each of them, are joint employers.

9 **JURISDICTION**

10 12. Jurisdiction exists in the Superior Court of the State of California pursuant to Code  
11 of Civil Procedure section 410.10.

12 13. Venue is proper in Santa Barbara County, California pursuant to Code of Civil  
13 Procedure sections 392, et seq. because, among other things, Santa Barbara County is where the  
14 causes of action complained of herein arose; the county in which the employment relationship  
15 began; the county in which the employment contract, or part of it, between Plaintiffs, or some of  
16 them, and Defendants was actually performed; and the county in which Defendants, or some of  
17 them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiffs and Class  
18 Members in Santa Barbara County, and because Defendants employ numerous Class Members in  
19 Santa Barbara County.

20 14. Plaintiffs are an “aggrieved employee” under PAGA, as Plaintiffs were employed by  
21 Defendants during the applicable statutory period and suffered one or more of the Labor Code  
22 violations set forth herein. Accordingly, Plaintiffs seek to recover civil penalties, as the term “civil  
23 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code  
24 Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq. (“PAGA”) plus  
25 reasonable attorneys’ fees and costs, for Plaintiffs and all other aggrieved current and former  
26 employees of Defendants during the Civil Penalty Period.

27 / / /

1        15.            Specifically, Plaintiffs seek to recover PAGA civil penalties through a representative  
2 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*  
3 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the  
4 PAGA allegations described herein is not required.

5        16.            During the period beginning one (1) year preceding the provision of notice to the  
6 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),  
7 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,  
8 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,  
9 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

10       17.            Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees  
11 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within  
12 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures  
13 specified in Labor Code section 2699.3.

14       18.            On or around November 10, 2021, Plaintiffs provided written notice pursuant to  
15 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of  
16 Defendants’ violation of various, including the herein-described, provisions of the Labor Code, to  
17 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of  
18 them.

19       19.            Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not  
20 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)  
21 calendar days of the November 10, 2021 postmarked date of the herein-described notice sent by  
22 Plaintiff to the LWDA and Defendants.

23       20.            On April 6, 2020, the Judicial Council of California approved Appendix I –  
24 Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the  
25 California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of  
26 action were tolled from April 6, 2020 until October 1, 2020.

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**FACTUAL BACKGROUND**

21. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiffs and Class Members, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiffs and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by prohibiting employees from recording their own hours or approving hours recorded by Defendants; by deducting time for meal periods even when meal periods were not taken or were cut short; to make phone calls or drive off the clock; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked; and for paying straight pay instead of overtime pay, to the detriment of Plaintiffs and Class Members.

22. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to pay minimum wages to Plaintiffs and Class Members, or some of them, in violation of California state wage and hour laws as a result of, among other things, at times, failing to accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage including, but not limited to, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by prohibiting employees from recording their own hours or approving hours recorded by Defendants; by deducting time for meal periods even when meal periods were not taken or were cut short; to make phone calls or drive off the clock; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked; failing to pay piece-rate employees for all rest and recovery periods that are separate and apart from any piece-rate compensation; and failing to pay piece-rate employees for all

1 non-productive time, to the detriment of Plaintiffs and Class Members.

2 23. For at least four (4) years prior to the filing of this Action and continuing to the  
3 present, Defendants have, at times, failed to provide Plaintiffs and Class Members, or some of them,  
4 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than  
5 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on  
6 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation  
7 for such unprovided meal periods as required by California wage and hour laws.

8 24. For at least four (4) years prior to the filing of this action and continuing to the  
9 present, Defendants have, at times, failed to authorize and permit Plaintiffs and Class Members, or  
10 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major  
11 fraction thereof and failed to provide compensation for such unprovided rest periods as required by  
12 California wage and hour laws.

13 25. For at least three (3) years prior to the filing of this action and continuing to the  
14 present, Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the  
15 full amount of their wages owed to them upon termination and/or resignation as required by Labor  
16 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,  
17 minimum wages, premium wages, and vacation pay pursuant to Labor Code section 227.3.

18 26. For at least one (1) year prior to the filing of this Action and continuing to the present,  
19 Defendants have, at times, failed to furnish Plaintiffs and Class Members, or some of them, with  
20 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages  
21 earned; all applicable hourly rates in effect during the pay period and the corresponding number of  
22 hours worked at each hourly rate; the name and address of the legal entity that is the employer; the  
23 name and address of the entity securing the services of the farm labor contractor who employed  
24 Plaintiffs and Class Members and other such information as required by Labor Code section 226,  
25 subdivision (a). Additionally, for piece-rate employees, Plaintiffs are informed and believe that  
26 Defendants failed to include all necessary information required by Labor Code section 226.2,  
27 including all piece-rate wages earned, rest and recovery periods, and all other non-productive time.

1 As a result thereof, Defendants have further failed to furnish employees with an accurate calculation  
2 of gross and gross wages earned, as well as gross and net wages paid.

3 27. For at least three (3) years prior to the filing of this action and continuing to the  
4 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the  
5 costs incurred in mileage and/or gas costs incurred in driving personal vehicles for work-related  
6 purposes such as having to drive from field to field and by requiring that employees use their own  
7 personal cellular phones to communicate with Defendants work-related purposes.

8 28. For at least one (1) year prior to the filing of this action and continuing to the present,  
9 Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the full  
10 amount of their wages for labor performed in a timely fashion as required under Labor Code section  
11 204, including by paying (or purporting to pay) wages earned on different pay periods (if at all).

12 29. Plaintiffs, on their own behalf and on behalf of Class Members, bring this action  
13 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.2,  
14 226.7, 227.3, 510, 512, 1194, 1194.2, 1197, 2802, 28810.3, and California Code of Regulations,  
15 Title 8, sections 11080, 11130, and 11140, seeking overtime wages, minimum wages, payment of  
16 premium wages for missed meal and rest periods, waiting time penalties, failure to timely pay wages  
17 during employment, wage statement penalties, failure to indemnify work-related expenses, failing  
18 to pay vested vacation time at the proper rate of pay, other such provisions of California law, and  
19 reasonable attorneys' fees and costs.

20 30. Plaintiffs, on their own behalf and on behalf of Class Members, pursuant to Business  
21 and Professions Code sections 17200 through 17208, also seeks (an) injunction(s) prohibiting  
22 Defendants from further violating the Labor Code and requiring the establishment of appropriate  
23 and effective means to prevent further violations, as well as all monies owed but withheld and  
24 retained by Defendants to which Plaintiffs and Class Members are entitled, as well as restitution of  
25 amounts owed.

26 31. At all relevant times mentioned herein, Defendants have had a policy or practice of  
27 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft  
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1 Protection Act of 2011) by, among other things, failing to provide Plaintiffs and other Aggrieved  
2 Employees with the rates of pay and overtime rates of pay applicable to their employment;  
3 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the  
4 name, address, and telephone number of the workers' compensation insurance carrier; information  
5 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants  
6 under Labor Code section 2810.5.

7 32. At all relevant times mentioned herein, Defendants failed to provide Plaintiffs and  
8 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to  
9 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not  
10 permit its use upon request as contemplated under California laws, to the detriment of Plaintiffs and  
11 all other Aggrieved Employees.

12 33. At all relevant times mentioned herein, Defendants had and have a policy or practice  
13 of preventing Plaintiffs and/or Aggrieved Employees from using or disclosing the skills, knowledge  
14 and experience they obtained at Defendants for purposes of competing with Defendants, including,  
15 without limitation, preventing Employees from disclosing their wages in negotiating a new job with  
16 a prospective employer, and from disclosing who else works at Defendants and under what  
17 circumstances that they might be receptive to an offer from a rival employer. Plaintiffs are informed  
18 and believe that this policy and/or practice violates Business and Professions Code sections 17200,  
19 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor  
20 Code sections 232, 232.5, and 1197.5, subdivision (k).

21 34. Defendants had and have a policy or practice of preventing Plaintiffs and/or other  
22 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants  
23 to their managers or outside to private attorneys or government officials, among others, in violation  
24 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section  
25 1102.5. In addition, Plaintiffs are informed and believe that Defendants' herein-described policies  
26 and/or practices prevent Plaintiffs and/or other Aggrieved Employees from disclosing information  
27 about unsafe or discriminatory working conditions, or about wage and hour violations in violation  
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1 of Labor Code section 232 and 232.5.

2 35. Defendants had and have a policy or practice of preventing Plaintiffs and/or other  
3 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state  
4 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,  
5 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,  
6 subdivision (k). Plaintiffs are informed and believe that this lawful conduct includes the exercise  
7 of Plaintiffs' and/or other Aggrieved Employee's constitutional rights of freedom of speech and  
8 economic liberty.

9 36. Plaintiffs are informed and believe, and based thereon alleges that Defendants had  
10 and have a policy or practice of failing to provide all working employees with suitable seats when  
11 the nature of the work reasonably permits the use of seats. Plaintiffs are further informed and  
12 believe, and based thereon alleges that Defendants has failed to place an adequate number of seats  
13 in reasonable proximity to the work area and/or permitted employees to use such seats when it does  
14 not interfere with the performance of their duties when employees are not engaged in the active  
15 duties of their employment and the nature of their work requires standing.

16 37. Plaintiffs, in Plaintiffs' representative capacities, seek civil penalties under Labor  
17 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate  
18 the California Labor Code as described above, including on behalf of Plaintiffs and other Aggrieved  
19 Employees pursuant to PAGA.

20 **CLASS ACTION ALLEGATIONS**

21 38. Plaintiffs bring this action on behalf of Plaintiffs and Class Members as a class action  
22 pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a class of all current  
23 and former non-exempt employees of Defendants within the State of California at any time  
24 commencing four (4) years preceding the filing of Plaintiffs' complaint up until the time that notice  
25 of the class action is provided to the class (collectively referred to as "Class Members").

26 39. Plaintiffs reserve the right under California Rule of Court rule 3.765, subdivision (b)  
27 to amend or modify the class description with greater specificity, further divide the defined class  
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1 into subclasses, and to further specify or limit the issues for which certification is sought.

2 40. This action has been brought and may properly be maintained as a class action under  
3 the provisions of Code of Civil Procedure section 382 because there is a well-defined community  
4 of interest in the litigation and the proposed Class is easily ascertainable.

5 **A. Numerosity**

6 41. The potential Class Members as defined are so numerous that joinder of all the  
7 members of the Class is impracticable. While the precise number of Class Members has not been  
8 determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class  
9 Members employed by Defendants within the State of California.

10 42. Accounting for employee turnover during the relevant periods necessarily increases  
11 this number. Plaintiffs allege Defendants' employment records would provide information as to the  
12 number and location of all Class Members. Joinder of all members of the proposed Class is not  
13 practicable.

14 **B. Commonality**

15 43. There are questions of law and fact common to Class Members. These common  
16 questions include, but are not limited to:

- 17 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours  
18 worked at a proper overtime rate of pay?
  - 19 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay  
20 for all other time worked at the employee's regular rate of pay and a rate of pay that  
21 is greater than the applicable minimum wage?
  - 22 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting  
23 Class Members to take compliant meal periods?
  - 24 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members  
25 with additional wages for missed or interrupted meal periods?
  - 26 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting  
27 Class Members to take compliant rest periods?
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- 1 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members  
2 with additional wages for missed rest periods?
- 3 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class  
4 Members upon termination or resignation all wages earned?
- 5 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code  
6 section 203 and 227.3?
- 7 I. Did Defendants violate Labor Code section 226, subdivision (a) and 226.2 by not  
8 furnishing Class Members with accurate wage statements?
- 9 J. Did Defendants fail to indemnify Class Members for all necessary expenditures or  
10 losses incurred in direct consequence of the discharge of their duties or by obedience  
11 to the directions of Defendants as required under Labor Code section 2802?
- 12 K. Did Defendants violate the Unfair Competition Law, Business and Professions Code  
13 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 14 L. Are Class Members entitled to restitution of wages under Business and Professions  
15 Code section 17203?
- 16 M. Are Class Members entitled to costs and attorneys' fees?
- 17 N. Are Class Members entitled to interest?

18 **C. Typicality**

19 44. The claims of Plaintiffs herein alleged are typical of those claims which could be  
20 alleged by any Class Members, and the relief sought is typical of the relief which would be sought  
21 by each Class Member in separate actions. Plaintiffs and Class Members sustained injuries and  
22 damages arising out of and caused by Defendants' common course of conduct in violation of laws  
23 and regulations that have the force and effect of law and statutes as alleged herein.

24 **D. Adequacy of Representation**

25 45. Plaintiffs will fairly and adequately represent and protect the interest of Class  
26 Members. Counsel who represents Plaintiffs is competent and experienced in litigating wage and  
27 hour class actions.

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52. Four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiffs and Class Members, at times, worked for Defendants during shifts that consisted of more than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a result of, including but not limited to, Defendants failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by prohibiting employees from recording their own hours or approving hours recorded by Defendants; by deducting time for meal periods even when meal periods were not taken or were cut short; to make phone calls or drive off the clock; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked; and for paying straight pay instead of overtime pay, to the detriment of Plaintiffs and Class Members.

53. Accordingly, by requiring Plaintiffs and Class Members to, at times, work greater than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and applicable IWC Wage Orders, and California law.

54. As a result of the unlawful acts of Defendants, Plaintiffs and Class Members have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

## SECOND CAUSE OF ACTION

**(Failure to Pay Minimum Wages – Against All Defendants)**

55. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

56. At all relevant times, Plaintiffs and Class Members were employees or former employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.



1       63.       Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall  
2 employ an employee for a work period of more than five (5) hours without a timely meal break of  
3 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.  
4 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours  
5 per day without providing the employee with a second timely meal period of not less than thirty (30)  
6 minutes in which the employee is relieved of all of his or her duties.

7       64.       Pursuant to Labor Code section 226.7, if an employer fails to provide an employee  
8 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,  
9 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate  
10 of compensation for each workday that the meal period is not provided.

11       65.       For four (4) years prior to the filing of the Complaint in this Action through the  
12 present, Plaintiffs and Class Members were, at times, not provided complete, timely 30-minute,  
13 duty-free uninterrupted meal periods every five hours of work without waiving the right to take  
14 them, as permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay  
15 at the Class Member's regular rate of compensation on the occasions that Class Members were not  
16 provided compliant meal periods.

17       66.       By their failure to provide Plaintiffs and Class Members compliant meal periods as  
18 contemplated by Labor Code section 512, among other California authorities, and failing, at times,  
19 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully  
20 violated the provisions of Labor Code section 512 and applicable Wage Orders.

21       67.       As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have  
22 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay  
23 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

24       68.       Plaintiffs and Class Members are entitled to recover the full amount of their unpaid  
25 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus  
26 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,  
27 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

1 **FOURTH CAUSE OF ACTION**

2 **(Failure to Provide Rest Periods – Against All Defendants)**

3 69. Plaintiffs reallege and incorporate by reference all of the allegations contained in the  
4 preceding paragraphs as though fully set forth hereat.

5 70. At all relevant times, Plaintiffs and Class Members were employees or former  
6 employees of Defendants covered by applicable Wage Orders.

7 71. California law and applicable Wage Orders require that employers “authorize and  
8 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour  
9 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-  
10 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who  
11 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes  
12 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided  
13 thirty (30) minutes of paid rest period.

14 72. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee  
15 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare  
16 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee’s  
17 regular rate of compensation for each work day that the rest period is not provided.

18 73. For four (4) years prior to the filing of the Complaint in this Action through the  
19 present, Plaintiffs and Class Members were, at times, not authorized or permitted to take complete,  
20 timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction  
21 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class  
22 Member’s regular rate of compensation on the occasions that Class Members were not authorized  
23 or permitted to take compliant rest periods.

24 74. By their failure, at times, to authorize and permit Plaintiffs and Class Members to  
25 take rest periods contemplated by California law, and one (1) additional hour of pay at the  
26 employee’s regular rate of compensation for such unprovided rest periods, as alleged above,  
27 Defendants willfully violated the provisions of Labor Code section 226.7 and applicable Wage  
28 Orders.

75. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for rest periods that they were not authorized or permitted to take.

76. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

## FIFTH CAUSE OF ACTION

**(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

77. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

78. At all relevant times, Plaintiffs and Class Members were employees or former employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable Wage Orders.

79. Pursuant to Labor Code sections 201 and 202, Plaintiffs and Class Members were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged Class Members were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Class Members who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation.

80. Plaintiffs are informed and believe, and based thereon allege, that in the three (3) years before the filing of the Complaint in this Action through the present, Defendants, due to the failure, at times, to provide wages and vacation wages mentioned above, failed to pay Plaintiffs and Class Members all wages earned prior to resignation or termination in accordance with Labor Code sections 201 or 202.

81. Plaintiffs are informed and believe Defendants' failure, at times, to pay Plaintiffs and Class Members all wages earned prior to termination or resignation in accordance with Labor Code

1 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiffs  
2 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,  
3 but intentionally adopted policies or practices incompatible with the requirements of Labor Code  
4 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination  
5 or resignation.

6 82. Pursuant to Labor Code sections 203 and 227.3, Plaintiffs and Class Members are  
7 entitled to waiting time penalties from the date their earned and unpaid wages were due, upon  
8 termination or resignation, until paid, up to a maximum of thirty (30) days.

9 83. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have  
10 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned  
11 prior to termination or resignation.

12 84. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections  
13 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover  
14 waiting time penalties, interest, and their costs of suit, as well.

## 15 **SIXTH CAUSE OF ACTION**

### 16 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

17 85. Plaintiffs reallege and incorporate by reference all of the allegations contained in the  
18 preceding paragraphs as though fully set forth hereat.

19 86. At all relevant times, Plaintiffs and Class Members were employees or former  
20 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

21 87. Pursuant to Labor Code section 226, subdivision (a), Plaintiffs and Class Members  
22 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized  
23 statement that accurately reflects, among other things, gross wages earned; total hours worked; net  
24 wages earned; all applicable hourly rates in effect during the pay period and the corresponding  
25 number of hours worked at each hourly rate; and the name and address of the legal entity that is the  
26 employer, among other things.

27 88. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year  
28 before the filing of the Complaint in this Action through the present, Defendants failed to comply

1 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their  
2 failure, at times, to furnish Plaintiffs and Class Members with accurate itemized statements that  
3 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;  
4 all applicable hourly rates in effect during the pay period and the corresponding number of hours  
5 worked at each hourly rate; and the name and address of the legal entity that is the employer; the  
6 name and address of the entity securing the services of the farm labor contractor who employed  
7 Plaintiffs and Class Members; among other things, including by failing to include all items required  
8 under Labor Code section 226.2, including all piece-rate information, rest and recovery time paid,  
9 and all other non-productive time paid to piece-rate employees.

10 89. Defendants' failure to, at times, provide Plaintiffs and Class Members with accurate  
11 wage statements was knowing, intentional, and willful. Defendants had the ability to provide  
12 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully  
13 provided wage statements that Defendants knew were not accurate.

14 90. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have  
15 suffered injury. The absence of accurate information on Class Members' wage statements at times  
16 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and  
17 mathematical computations to determine the amount of wages owed; causes difficulty and expense  
18 in attempting to reconstruct time and pay records; and led to submission of inaccurate information  
19 about wages and amounts deducted from wages to state and federal governmental agencies, among  
20 other things.

21 91. Pursuant to Labor Code section 226, subdivision (e), Plaintiffs and Class Members  
22 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor  
23 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent  
24 pay period, not to exceed an aggregate \$4,000.00 per employee.

25 92. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil  
26 Procedure section 1032, Civil Code section 3287, Plaintiffs and Class Members are entitled to  
27 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable  
28 attorneys' fees, and costs of suit.

1 **SEVENTH CAUSE OF ACTION**

2 **(Violation of Labor Code § 2802 – Against All Defendants)**

3 93. Plaintiffs reallege and incorporate by reference all of the allegations contained in the  
4 preceding paragraphs as though fully set forth hereat.

5 94. At all relevant times, Plaintiffs and Class Members were employees or former  
6 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

7 95. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify  
8 his or her employee for all necessary expenditures or losses incurred by the employee in direct  
9 consequence of the discharge of his or her duties . . .”

10 96. For three (3) years prior to the filing of the Complaint in this Action through the  
11 present, Defendants required Plaintiffs and Class Members, or some of them, to incur, at times,  
12 necessary expenditures or losses in direct consequence of the discharge of their duties or at the  
13 obedience to the directions of Defendants that included, without limitation: mileage and/or gas costs  
14 incurred in driving personal vehicles for work-related purposes and using personal cellular phones  
15 for work-related purposes.

16 97. During that time period, Plaintiffs are informed and believe, and based thereon allege  
17 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff sand  
18 Class Members for those losses and/or expenditures.

19 98. As a result of Defendants’ unlawful conduct, Plaintiffs and Class Members have  
20 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the  
21 herein-described losses and/or expenditures.

22 99. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and  
23 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover  
24 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and  
25 costs of suit.

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1 **EIGHTH CAUSE OF ACTION**

2 **(Unfair Competition – Against All Defendants)**

3 100. Plaintiffs reallege and incorporate by reference all of the allegations contained in the  
4 preceding paragraphs as though fully set forth hereat.

5 101. Plaintiffs are informed and believe, and based thereon allege that the unlawful  
6 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business  
7 and Professions Code section 17200. Due to their unlawful business practices in violation of the  
8 Labor Code, Defendants have gained a competitive advantage over other comparable companies  
9 doing business in the State of California that comply with their obligations to compensate employees  
10 in accordance with the Labor Code.

11 102. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and Class  
12 Members have suffered injury in fact and lost money or property.

13 103. Pursuant to Business and Professions Code section 17203, Plaintiffs and Class  
14 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor  
15 Code and requiring the establishment of appropriate and effective means to prevent further  
16 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,  
17 including interest thereon, in which they had a property interest and which Defendants nevertheless  
18 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed  
19 to Plaintiffs and Class Members is necessary to prevent Defendants from becoming unjustly  
20 enriched by their failure to comply with the Labor Code.

21 104. Plaintiffs and Class Members are entitled to costs of suit under Code of Civil  
22 Procedure section 1032 and interest under Civil Code section 3287.

23 **ELEVENTH CAUSE OF ACTION**

24 **(Civil Penalties under the Private Attorneys General Act – Against All Defendants)**

25 105. Plaintiffs re-allege and incorporate by reference all of the allegations contained in  
26 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

27 / / /

Civil Penalties Under Labor Code § 226.3

106. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees with itemized wage statements that accurately reflect: gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and other such information as required by Labor Code section 226, subdivision (a).

107. Labor Code section 226.3 states 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 citation 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 records required in subdivision (a) of Section 226.”

108. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in this section are in addition to any other penalty provided by law.”

109. At all relevant times herein, Plaintiffs are informed and believe, and based thereon allege, that Defendants, and each of them, had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; the name and address of each employer with whom they have been placed to work; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the legal name and address of the employer; and other such information as required by Labor Code section 226, subdivision (a).

110. Pursuant to Labor Code section 226.3, Plaintiffs and other Aggrieved Employees are entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay period for each subsequent violation.

1 Violation of Labor Code § 558

2 111. Labor Code section 558, subdivision (a) states: “Any employer or other person acting  
3 on behalf of an employer who violates, or causes to be violated . . . any provision regulating hours  
4 and days of work in any of the Industrial Welfare Commission” shall be subject to a civil penalty as  
5 follows:

- 6 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each  
7 pay period for which the employee was underpaid in addition to an amount sufficient  
8 to recover underpaid wages;
- 9 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid  
10 employee for each pay period for which the employee was underpaid in addition to  
11 an amount sufficient to recover underpaid wages;
- 12 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

13 112. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and  
14 each of them, violated, or caused to be violated, the Labor Code sections described herein, including  
15 causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime  
16 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the  
17 regular payday designated by Employer, the name of the employer, including any “doing business  
18 as” names used, the name, address and telephone number of the workers’ compensation insurance  
19 carrier, information regarding paid sick leave, and other pertinent information.

20 113. As a direct and proximate result of the herein-described Labor Code violations, and  
21 pursuant to Labor Code section 558, Plaintiffs and other Aggrieved Employees are entitled to  
22 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty  
23 dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred  
24 dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

25 Violation of Labor Code § 1174.5

26 114. Labor Code section 1174, subdivision (b) states that every person employing labor  
27 in California is required to “[a]llow any member of the commission or the employees of the Division  
28

1 of Labor Standards Enforcement free access to the place of business or employment of the person  
2 to secure any information or make any investigation that they are authorized by this chapter to  
3 ascertain or make. The commission may inspect or make excerpts, relating to the employment of  
4 employees, from the books, reports, contracts, payrolls, documents, or papers of the person.”

5 115. Labor Code section 1174, subdivision (c) has required every person employing labor  
6 in California to “[k]eep a record showing the names and addresses of all employees employed and  
7 the ages of all minors.”

8 116. Labor Code section 1174, subdivision (d) has required every person employing labor  
9 in California to “[k]eep, at a central location in the state or at the plants or establishments at which  
10 employees are employed, payroll records showing the hours worked daily by and the wages paid to,  
11 and the number of piece-rate units earned by and applicable piece rate paid to, employees employed  
12 at the respective plants or establishments. These records shall be kept in accordance with rules  
13 established for this purpose by the commission, but in any case, shall be kept on file for not less  
14 than three years. An employer shall not prohibit an employee from maintaining a personal record  
15 of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

16 117. Labor Code section 1174.5 states that, “[a]ny person employing labor who willfully  
17 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate  
18 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any  
19 member of the commission or employees of the division to inspect records pursuant to subdivision  
20 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

21 118. Plaintiffs are informed and believe, and based thereon allege, that Defendants have  
22 willfully failed keep adequate or accurate time records including wage statements and similar  
23 payroll documents under Labor Code section 226, documents signed to obtain or hold employment  
24 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records  
25 under Labor Code section 1174.

26 119. As a direct and proximate result of the herein-described Labor Code violations, and  
27 pursuant to Labor Code section 1174.5, Plaintiffs and other Aggrieved Employees are entitled to  
28

1 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five  
2 hundred dollars (\$500) per violation per Aggrieved Employee.

3 Violation of Labor Code § 1197.1

4 120. Labor Code section 1197.1, subdivision (a) provides: "Any employer or other person  
5 acting either individually or as an officer, agent, or employee of another person, who pays or causes  
6 to be paid to any employee a wage less than the minimum fixed by an applicable state or local law,  
7 or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated  
8 damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as  
9 follows:

- 10 (1) For any initial violation that is intentionally committed, one hundred dollars  
11 (\$100) for each underpaid employee for each pay period for which the  
12 employee is underpaid. This amount shall be in addition to an amount  
13 sufficient to recover underpaid wages, liquidated damages pursuant to Section  
14 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 15 (2) For each subsequent violation for the same specific offense, two hundred fifty  
16 dollars (\$250) for each underpaid employee for each pay period for which the  
17 employee is underpaid regardless of whether the initial violation is  
18 intentionally committed. This amount shall be in addition to an amount  
19 sufficient to recover underpaid wages, liquidated damages pursuant to Section  
20 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 21 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to  
22 Section 203, recovered pursuant to this section shall be paid to the affected  
23 employee."

24 121. Plaintiffs are informed and believe, and based thereon allege, that Defendants caused  
25 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,  
26 without limitation, failing to pay Plaintiffs or other Aggrieved Employees' to pay minimum wages  
27 for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated  
28 damages.

1 122. As a direct and proximate result of the herein-described Labor Code violations, and  
2 pursuant to Labor Code section 1197.1, Plaintiffs and other Aggrieved Employees are entitled to  
3 recover civil penalties for Defendants' herein-described Labor Code violations in the amount one  
4 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and  
5 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each  
6 subsequent violation.

7 Civil Penalties Under Labor Code § 2699

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

14 124. Labor Code section 2699, subdivision (f), provides that for all provisions of the Labor  
15 Code except those for which a civil penalty is specifically provided, the established civil penalty for  
16 a violation of those provisions is as follows: if, at the time of the alleged violation, the person  
17 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved  
18 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved  
19 employee per pay period for each subsequent violation.

20 125. Plaintiffs are informed and believe, and based thereon allege that Defendants, and  
21 each of them, violated the Labor Code sections described herein, including, without limitation, for  
22 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,  
23 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the  
24 name of the employer, including any "doing business as" names used, the name, address and  
25 telephone number of the workers' compensation insurance carrier, information regarding paid sick  
26 leave, and other pertinent information required to be disclosed by Employer under Labor Code  
27 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid  
28 sick leave required to be provided pursuant to California and local laws.

1 126. As a direct and proximate result of the herein-described Labor Code violations, and  
2 pursuant to Labor Code section 2699, subdivision (g), among other authorities, Plaintiffs and  
3 similarly Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of  
4 the herein and therein described Labor Code violations during the Civil Penalty Period in the amount  
5 of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation,  
6 and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent  
7 violation.

8 127. Moreover, Plaintiffs and Aggrieved Employees are also entitled to an award of  
9 reasonable attorneys' fees and costs in connection with their herein-described claims for civil  
10 penalties.

11 **DEMAND FOR JURY TRIAL**

12 128. Plaintiffs demand a trial by jury on all causes of action contained herein.

13 **PRAYER**

14 WHEREFORE, on behalf of themselves and Class Members, pray for judgment  
15 against Defendants as follows:

- 16 A. An order certifying this case as a Class Action;
- 17 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's  
18 counsel as class counsel;
- 19 C. An Order appointing counsel for Plaintiffs as Class-PAGA Counsel;
- 20 D. Damages for all wages earned and owed, including minimum. overtime wages,  
21 under Labor Code sections 510, 1194, 1197 and 1199;
- 22 E. Liquidated damages pursuant to Labor Code section 1194.2;
- 23 F. Damages for unpaid premium wages from missed meal and rest periods under,  
24 among other Labor Code sections, 512 and 226.7;
- 25 G. Penalties for inaccurate wage statements under Labor Code sections 226,  
26 subdivision (e) and 226.2;
- 27 H. Waiting time penalties under Labor Code section 203;
- 28

- 1 I. Damages under Labor Code sections 2802;
- 2 J. Preliminary and permanent injunctions prohibiting Defendants from further
- 3 violating the California Labor Code and requiring the establishment of appropriate
- 4 and effective means to prevent future violations;
- 5 K. Restitution of wages and benefits due which were acquired by means of any unfair
- 6 business practice, according to proof;
- 7 L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
- 8 1174.5, 1197.1, and 2699
- 9 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 10 N. For attorneys' fees in prosecuting this action;
- 11 O. For costs of suit incurred herein; and
- 12 P. For such other and further relief as the Court deems just and proper.

13

14

15 Dated: January 14, 2022

BIBIYAN LAW GROUP, P.C.

16

17 BY: 

DIEGO AVILES

18 Attorneys for Plaintiff RAQUEL PINEDA SALTO and

19 LAURA GARZIA on behalf of themselves and all

20 others similarly situated

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd, Suite 500, Beverly Hills, California 90211.

On January 14, 2022, I caused a true and correct copy of the foregoing document(s) described as **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** to be served by electronic transmission to the below e-mail addresses:

Brian T. Daly  
Rafael Gonzalezz  
Mullen & Henzel, L.L.P.  
112 E Victoria Street  
Santa Barbra, California 93101  
*bdaly@mullenlaw.com*  
*RGonzalez@mullenlaw.com*

**Counsel for Defendants**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed on January 14, 2022 at Beverly Hills, California.

/s/ Rosemary Martir  
Rosemary Martir