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7 and on behalf of himself and all others
similarly situated and aggrieved

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF IMPERIAL**

10
11 ATANASIO GARCIA, an individual and on
12 behalf of all others similarly situated and
aggrieved,

13 Plaintiff,

14 v.

15 NATURE FRESH FARMS, LLC, an Arizona
16 limited liability company; JERRY JOSEPH
17 RAVA an individual; and DOES 1 through
100, inclusive,

18 Defendants.
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CASE NO.: ECU001961

[Assigned for all purposes to the Hon. L. Brooks
Anderholt in Dept. 9]

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

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 TIMELY PAY WAGES;
8. UNFAIR COMPETITION;
9. FAILURE TO INDEMNIFY; and
10. 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 ATANASIO GARCIA ("Plaintiff"), on behalf of Plaintiff and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against NATURE FRESH FARMS, LLC, and any of its respective subsidiaries or affiliated companies within the State of California ("NATURE FRESH"); JERRY JOSEPH RAVA, an individual ("MR. RAVA" and collectively, including with DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff 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 Plaintiff 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 ATANASIO GARCIA is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff ATANASIO GARCIA as a non-exempt employee, with duties that included, but were not limited to, maintaining and filling motors with oil and diesel. Plaintiff is informed and believes, and based thereon alleges that Plaintiff ATANASIO GARCIA worked for Defendants from approximately July of 2007 through approximately August of 2020.

1 **B. Defendants**

2 4. Plaintiff is informed and believes and based thereon alleges that defendant
3 NATURE FRESH is, and at all times relevant hereto was, a limited liability company organized
4 and existing under and by virtue of the laws of the State of Arizona and doing business in the
5 County of Imperial, State of California.

6 5. Plaintiff is informed and believes and based thereon alleges that defendant MR.
7 RAVA is, and at all times relevant hereto was, an individual residing in California, as well as a
8 Manager for NATURE FRESH, and DOES 1 through 100, as further defined below. Plaintiff is
9 further informed and believes and based thereon alleges that MR. RAVA violated, or caused to be
10 violated, the above-referenced and below-referenced Labor Code provisions in violation of Labor
11 Code section 558.1.

12 6. The true names and capacities, whether individual, corporate, associate, or
13 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
14 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
15 section 474. Plaintiff is informed and believes and based thereon alleges that each of the
16 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts
17 referred to herein. Plaintiff will seek leave of court to amend this First Amended Complaint to
18 reflect the true names and capacities of the defendants designated hereinafter as DOES when such
19 identities become known. Plaintiff is informed and believes, and based thereon alleges, that each
20 defendant acted in all respects pertinent to this action, as the agent of the other defendant(s),
21 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
22 each defendant are legally attributable to the other defendants. Whenever, heretofore or
23 hereinafter, reference is made to "Defendants," it shall include NATURE FRESH, and any of their
24 parent, subsidiary, or affiliated companies within the State of California, RAVA, as well as DOES
25 1 through 100 identified herein.

26 **JOINT LIABILITY ALLEGATIONS**

27 7. Plaintiff is informed and believes and based thereon alleges that all the times
28 mentioned herein, each of the Defendants was the agent, principal, employee, employer,

1 representative, joint venture or co-conspirator of each of the other defendants, either actually or
2 ostensibly, and in doing the things alleged herein acted within the course and scope of such
3 agency, employment, joint venture, and conspiracy.

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

13 9. Plaintiff is further informed and believes and based thereon alleges that RAVA
14 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
15 provisions in violation of Labor Code section 558.1.

16 10. Plaintiff is informed and believes, and based thereon alleges, that there exists such
17 a unity of interest and ownership between Defendants, and each of them, that their individuality
18 and separateness have ceased to exist.

19 11. Plaintiff is informed and believes, and based thereon alleges that despite the
20 formation of the purported corporate existence of NATURE FRESH, and DOES 1 through 50,
21 inclusive (the "Alter Ego Defendants"), they, and each of them, are one and the same with RAVA,
22 and DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to,
23 the following reasons:

24 A. The Alter Ego Defendants are completely dominated and controlled by the
25 Individual Defendants who personally committed the wrongful and illegal acts and
26 violated the laws as set forth in this First Amended Complaint, and who has hidden
27 and currently hide behind the Alter Ego Defendants to perpetrate frauds,
28 circumvent statutes, or accomplish some other wrongful or inequitable purpose;

- 1 B. The Individual Defendants derive actual and significant monetary benefits by and
2 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
3 Defendants as the funding source for the Individual Defendants' own personal
4 expenditures;
- 5 C. Plaintiff is informed and believes and thereon alleges that the Individual
6 Defendants and the Alter Ego Defendants, while really one and the same, were
7 segregated to appear as though separate and distinct for purposes of perpetrating a
8 fraud, circumventing a statute, or accomplishing some other wrongful or
9 inequitable purpose;
- 10 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
11 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
12 mentioned herein were, so mixed and intermingled that the same cannot reasonably
13 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
14 are, and at all relevant times mentioned herein were, used by the Individual
15 Defendants as mere shells and conduits for the conduct of certain of their, and each
16 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
17 herein were, the alter egos of the Individual Defendants;
- 18 E. The recognition of the separate existence of the Individual Defendants and the
19 Alter Ego Defendants would promote injustice insofar that it would permit
20 defendants to insulate themselves from liability to Plaintiff for violations of the
21 Civil Code, Labor Code, and other statutory violations. The corporate existence of
22 these defendants should thus be disregarded in equity and for the ends of justice
23 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein;
- 24 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
25 Defendants (and vice versa), and the fiction of their separate corporate existence
26 must be disregarded;
- 27 12. As a result of the aforementioned facts, Plaintiff is informed and believes, and
28 based thereon alleges that Defendants, and each of them, are joint employers.

JURISDICTION

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

14. Venue is proper in Imperial County, California pursuant to Code of Civil Procedure sections 392, et seq. because, among other things, Imperial County is where the causes of action complained of herein arose; the county in which the employment relationship began; the county in which performance of the employment contract, or part of it, between Plaintiff and Defendants was due to be performed; the county in which the employment contract, or part of it, between Plaintiff and Defendants was actually performed. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Class Members in Imperial County, and because Defendants employ numerous Class Members in Imperial County.

15. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term "civil penalty" is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq. ("PAGA") plus reasonable attorneys' fees and costs, for Plaintiff and all other aggrieved current and former employees of Defendants during the Civil Penalty Period.

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

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

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

5 19. On or around July 1, 2021, Plaintiff provided written notice pursuant to Labor Code
6 section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation
7 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
8 by certified mail, with return receipt requested to Defendants, and each of them.

9 20. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
10 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
11 calendar days of the July 1, 2021 postmarked date of the herein-described notice sent by Plaintiff
12 to the LWDA and Defendants.

13 **FACTUAL BACKGROUND**

14 21. For at least four (4) years prior to the filing of this action and continuing to the
15 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members,
16 or some of them, in violation of California state wage and hour laws as a result of, without
17 limitation, Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per
18 week, and seven consecutive work days in a work week without being properly compensated for
19 hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work
20 week, and/or hours worked on the seventh consecutive work day in a work week by, among other
21 things, failing to accurately track and/or pay for all hours actually worked at the proper overtime
22 rate of pay to the detriment of Plaintiff and Class Members.

23 22. For at least four (4) years prior to the filing of this Action and continuing to the
24 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
25 or some of them, in violation of California state wage and hour laws as a result of, among other
26 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
27 rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members.

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

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

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

17 26. For at least one (1) year prior to the filing of this Action and continuing to the
18 present, Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them,
19 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
20 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate; and other such information as required by Labor
22 Code section 226, subdivision (a). As a result thereof, Defendants have further failed to furnish
23 employees with an accurate calculation of gross and gross wages earned, as well as gross and net
24 wages paid.

25 27. For at least one (1) year prior to the filing of this action and continuing to the
26 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them,
27 the full amount of their wages for labor performed in a timely fashion as required under Labor
28 Code section 204.

1 28. Plaintiff, on his own behalf and on behalf of Class Members, brings this action
2 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
3 510, 512, 558.1, 1194, 1194.2, 1197, and California Code of Regulations, Title 8, section 11040,
4 seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest
5 periods, failure to pay timely wages, waiting time penalties, wage statement penalties, other such
6 provisions of California law, and reasonable attorneys' fees and costs.

7 29. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
8 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
9 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
10 appropriate and effective means to prevent further violations, as well as all monies owed but
11 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as
12 restitution of amounts owed.

13 30. At all relevant times herein, Defendants had and have a policy or practice of failing
14 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
15 separation of employment as wages at their final rate of pay in violation of Labor Code section
16 227.3 and applicable Wage Orders.

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

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

3 33. At all relevant times mentioned herein, Defendants have had a policy or practice of
4 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
5 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
6 any calendar month shall be paid for between the 16th and 26th day of the month during which the
7 labor was performed, and labor performed between the 16th and the last day, inclusive of any
8 calendar month, shall be paid for between the 1st and 10th day of the following month."

9 34. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
10 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which
11 violate the California Labor Code as described above, including on behalf of Plaintiff and other
12 Aggrieved Employees pursuant to PAGA.

13 **CLASS ACTION ALLEGATIONS**

14 35. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class
15 action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all
16 current and former non-exempt employees of Defendants within the State of California at any time
17 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that
18 notice of the class action is provided to the class (collectively referred to as "Class Members").

19 36. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision
20 (b) to amend or modify the class description with greater specificity, further divide the defined
21 class into subclasses, and to further specify or limit the issues for which certification is sought.

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

25 **A. Numerosity**

26 38. The potential Class Members as defined are so numerous that joinder of all the
27 members of the Class is impracticable. While the precise number of Class Members has not been

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1 determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class
2 Members employed by Defendants within the State of California.

3 39. Accounting for employee turnover during the relevant periods necessarily increases
4 this number. Plaintiff alleges Defendants' employment records would provide information as to
5 the number and location of all Class Members. Joinder of all members of the proposed Class is
6 not practicable.

7 **B. Commonality**

8 40. There are questions of law and fact common to Class Members. These common
9 questions include, but are not limited to:

- 10 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all
11 hours worked at a proper overtime rate of pay?
- 12 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
13 for all other time worked at the employee's regular rate of pay and a rate of pay that
14 is greater than the applicable minimum wage?
- 15 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
16 Class Members to take compliant meal periods?
- 17 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
18 with additional wages for missed or interrupted meal periods?
- 19 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
20 Class Members to take compliant rest periods?
- 21 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
22 with additional wages for missed rest periods?
- 23 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
24 Members upon termination or resignation all wages earned?
- 25 H. Are Defendants liable to Class Members for waiting time penalties under Labor
26 Code section 203?
- 27 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
28 Class Members with accurate wage statements?

- 1 J. Did Defendants fail to pay Class Members in a timely fashion as required under
- 2 Labor Code section 204?
- 3 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
- 4 losses incurred in direct consequence of the discharge of their duties or by
- 5 obedience to the directions of Defendants as required under Labor Code section
- 6 2802?
- 7 L. Did Defendants violate the Unfair Competition Law, Business and Professions
- 8 Code section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 9 M. Are Class Members entitled to restitution of wages under Business and Professions
- 10 Code section 17203?
- 11 N. Are Class Members entitled to costs and attorneys' fees?
- 12 O. Are Class Members entitled to interest?

13 **C. Typicality**

14 41. The claims of Plaintiff herein alleged are typical of those claims which could be

15 alleged by any Class Members, and the relief sought is typical of the relief which would be sought

16 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and

17 damages arising out of and caused by Defendants' common course of conduct in violation of laws

18 and regulations that have the force and effect of law and statutes as alleged herein.

19 **D. Adequacy of Representation**

20 42. Plaintiff will fairly and adequately represent and protect the interest of Class

21 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and

22 hour class actions.

23 **E. Superiority of Class Action**

24 43. A class action is superior to other available means for the fair and efficient

25 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and

26 questions of law and fact common to Class Members predominate over any questions affecting

27 only individual Class Members. Class Members, as further described therein, have been damaged

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1 and are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in
2 the violation of the Labor Code at times, as set out herein.

3 44. Class action treatment will allow Class Members to litigate their claims in a manner
4 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware
5 of any difficulties that are likely to be encountered in the management of this action that would
6 preclude its maintenance as a class action.

7 **FIRST CAUSE OF ACTION**

8 **(Failure to Pay Overtime Wages – Against All Defendants)**

9 45. Plaintiff realleges and incorporates by reference all of the allegations contained in
10 the preceding paragraphs as though fully set forth hereat.

11 46. At all relevant times, Plaintiff and Class Members were employees or former
12 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as
13 applicable Wage Orders.

14 47. At all times relevant to this First Amended Complaint, Labor Code section 510 was
15 in effect and provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of
16 eight hours in one workday and any work in excess of forty hours in any one workweek . . . shall
17 be compensated at the rate of no less than one and one-half times the regular rate of pay for an
18 employee."

19 48. At all times relevant to this First Amended Complaint, Labor Code section 510
20 further provided that "[a]ny work in excess of 12 hours in one day shall be compensated at the rate
21 of no less than twice the regular rate of pay for an employee. In addition, any work in excess of
22 eight hours on any seventh day of a workweek shall be compensated at the rate of no less than
23 twice the regular rate of pay."

24 49. Four (4) years prior to the filing of the Complaint in this Action through the
25 present, Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted
26 of more than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or
27 seven (7) consecutive workdays in a workweek, without being paid overtime wages for all hours
28 worked as a result of, including but not limited to, Defendants failing to accurately track and/or

1 pay for all hours actually worked at the proper overtime rate of pay to the detriment of Plaintiff
2 and Class Members.

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

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

12 **SECOND CAUSE OF ACTION**

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

14 52. Plaintiff realleges and incorporates by reference all of the allegations contained in
15 the preceding paragraphs as though fully set forth hereat.

16 53. At all relevant times, Plaintiff and Class Members were employees or former
17 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage
18 Orders.

19 54. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
20 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
21 Defendants' control.

22 55. For four (4) years prior to the filing of the Complaint in this Action through the
23 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at
24 their regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class
25 Members.

26 56. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
27 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
28 for all hours worked or otherwise due.

1 57. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
2 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled
3 to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
4 damages, reasonable attorneys' fees and costs of suit.

5 **THIRD CAUSE OF ACTION**

6 **(Failure to Provide Meal Periods – Against All Defendants)**

7 58. Plaintiff realleges and incorporates by reference all of the allegations contained in
8 the preceding paragraphs as though fully set forth hereat.

9 59. At all relevant times, Plaintiff and Class Members were employees or former
10 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

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

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

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

27 63. By their failure to provide Plaintiff and Class Members compliant meal periods as
28 contemplated by Labor Code section 512, among other California authorities, and failing, at times,

1 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
2 violated the provisions of Labor Code section 512 and applicable Wage Orders.

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

6 65. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
7 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
8 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and
9 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

10 **FOURTH CAUSE OF ACTION**

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

12 66. Plaintiff realleges and incorporates by reference all of the allegations contained in
13 the preceding paragraphs as though fully set forth hereat.

14 67. At all relevant times, Plaintiff and Class Members were employees or former
15 employees of Defendants covered by applicable Wage Orders.

16 68. California law and applicable Wage Orders require that employers "authorize and
17 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour
18 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-
19 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
20 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20)
21 minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be
22 provided thirty (30) minutes of paid rest period.

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

27 70. For four (4) years prior to the filing of the Complaint in this Action through the
28 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,

1 timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major
2 fraction thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay
3 at the Class Member's regular rate of compensation on the occasions that Class Members were not
4 authorized or permitted to take compliant rest periods.

5 71. By their failure, at times, to authorize and permit Plaintiff and Class Members to
6 take rest periods contemplated by California law, and one (1) additional hour of pay at the
7 employee's regular rate of compensation for such unprovided rest periods, as alleged above,
8 Defendants willfully violated the provisions of Labor Code section 226.7 and applicable Wage
9 Orders.

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

13 73. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
14 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
15 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and
16 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

17 **FIFTH CAUSE OF ACTION**

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

19 74. Plaintiff realleges and incorporates by reference all of the allegations contained in
20 the preceding paragraphs as though fully set forth hereat.

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

24 76. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
25 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
26 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
27 discharge immediately upon termination. Class Members who resigned were entitled to payment
28 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of

1 resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages
2 earned and unpaid at the time of resignation.

3 77. Plaintiff is informed and believes, and based thereon alleges, that in the three (3)
4 years before the filing of the Complaint in this Action through the present, Defendants, due to the
5 failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class
6 Members all wages earned prior to resignation or termination in accordance with Labor Code
7 sections 201 or 202.

8 78. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
9 Class Members all wages earned prior to termination or resignation in accordance with Labor
10 Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by
11 Plaintiff and Class Members at the time of termination in accordance with Labor Code sections
12 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of
13 Labor Code sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to
14 termination or resignation..

15 79. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
16 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
17 resignation, until paid, up to a maximum of thirty (30) days.

18 80. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
19 suffered damages in an amount subject to proof, to the extent they were not paid for all wages
20 earned prior to termination or resignation.

21 81. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
22 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
23 waiting time penalties, interest, and their costs of suit, as well.

24 **SIXTH CAUSE OF ACTION**

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

26 82. Plaintiff realleges and incorporates by reference all of the allegations contained in
27 the preceding paragraphs as though fully set forth hereat.

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1 83. At all relevant times, Plaintiff and Class Members were employees or former
2 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

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

9 85. Plaintiff is informed and believes, and based thereon alleges, that in the one (1)
10 year before the filing of the Complaint in this Action through the present, Defendants failed to
11 comply with Labor Code section 226, subdivision (a) by adopting policies and practices that
12 resulted in their failure, at times, to furnish Plaintiff and Class Members with accurate itemized
13 statements that accurately reflect, among other things, gross wages earned; total hours worked; net
14 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate; the name and address of the legal entity that is the
16 employer, among other things.

17 86. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
18 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
19 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
20 provided wage statements that Defendants knew were not accurate.

21 87. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
22 suffered injury. The absence of accurate information on Class Members' wage statements at times
23 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
24 mathematical computations to determine the amount of wages owed; causes difficulty and expense
25 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
26 about wages and amounts deducted from wages to state and federal governmental agencies, among
27 other things.

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

5 89. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
6 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
7 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
8 attorneys' fees, and costs of suit.

9 **SEVENTH CAUSE OF ACTION**

10 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

11 90. Plaintiff realleges each and every allegation set forth in the preceding paragraphs
12 and incorporate each by reference as though fully set forth hereat.

13 91. At all relevant times, Plaintiff and Class Members were employees or former
14 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

15 92. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th
16 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
17 during which the labor was performed, and labor performed between the 16th and the last day,
18 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
19 month.”

20 93. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
21 independent and apart from, any other penalty provided in this article, every person who fails to
22 pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,
23 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
24 hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent
25 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay
26 each employee, plus 25 percent of the amount unlawfully withheld.”

27 94. Plaintiff is informed and believes, and based thereon alleges, that in the one (1)
28 year before the filing of the Complaint in this Action through the present, Defendants employed

1 policies and practices that resulted in, at times, not paying Plaintiff and Class Members in
2 accordance with Labor Code section 204.

3 95. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to
4 recover penalties for Defendants' violations of Labor Code section 204, in the amount of one
5 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars
6 (\$200) for each subsequent violation in connection with each payment that was made in violation
7 of Labor Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

8 96. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
9 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of
10 penalties, interest, and their costs of suit, as well.

11 **EIGHTH CAUSE OF ACTION**

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

13 97. Plaintiff realleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs as though fully set forth hereat.

15 98. Plaintiff is informed and believes, and based thereon alleges that the unlawful
16 conduct of Defendants alleged herein constitutes unfair competition within the meaning of
17 Business and Professions Code section 17200. Due to their unlawful business practices in
18 violation of the Labor Code, Defendants have gained a competitive advantage over other
19 comparable companies doing business in the State of California that comply with their obligations
20 to compensate employees in accordance with the Labor Code.

21 99. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
22 Members have suffered injury in fact and lost money or property.

23 100. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
24 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
25 Code and requiring the establishment of appropriate and effective means to prevent further
26 violations, as well as restitution of all wages and other monies owed to them under the Labor
27 Code, including interest thereon, in which they had a property interest and which Defendants
28 nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of

1 the money owed to Plaintiff and Class Members is necessary to prevent Defendants from
2 becoming unjustly enriched by their failure to comply with the Labor Code.

3 101. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
4 Procedure section 1032 and interest under Civil Code section 3287.

5 **NINTH CAUSE OF ACTION**

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

7 102. Plaintiff realleges and incorporates by reference all of the allegations contained in
8 the preceding paragraphs as though fully set forth hereat.

9 103. At all relevant times, Plaintiff and Class Members were employees or former
10 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

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

14 105. For three (3) years prior to the filing of the Complaint in this Action through the
15 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
16 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
17 obedience to the directions of Defendants that included, without limitation: purchasing and/or
18 providing unreturned deposits for mandatory work uniforms and laundering mandatory work
19 uniforms.

20 106. During that time period, Plaintiff is informed and believes, and based thereon
21 alleges that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff
22 sand Class Members for those losses and/or expenditures.

23 107. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have
24 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
25 herein-described losses and/or expenditures.

26 108. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
27 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover

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1 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees
2 and costs of suit.

3 **TENTH CAUSE OF ACTION**

4 **(Civil Penalties under the Private Attorneys General Act (2004) – Against All Defendants)**

5 109. Plaintiff realleges and incorporates by reference all of the allegations contained in
6 the preceding paragraphs as though fully set forth hereat.

7 110. **Civil Penalties Under Labor Code § 210**

- 8 A. At all relevant times herein, Labor Code section 204, requires and required that:
9 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month
10 shall be paid for between the 16th and 26th day of the month during which the labor
11 was performed, and labor performed between the 16th and the last day, inclusive, of
12 any calendar month, shall be paid for between the 1st and 10th day of the following
13 month.”
- 14 B. At all relevant times herein, Labor Code section 210, subdivision (a) states and
15 stated that “[i]n addition to, and entirely independent and apart from, any other
16 penalty provided in this article, every person who fails to pay the wages of each
17 employee as provided in Sections 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5,
18 shall be subject to a civil penalty as follows: (1) For any initial violation, one
19 hundred dollars (\$100) for each failure to pay each employee” and “(2) For each
20 subsequent violation, or any willful or intentional violation, two hundred dollars
21 (\$200) for each failure to pay each employee, plus 25 percent of the amount
22 unlawfully withheld.”
- 23 C. At all relevant times herein, Defendants have had a consistent policy or practice of
24 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a
25 timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section
26 210, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties
27 for Defendants’ violations of Labor Code section 204, in the amount of one
28 hundred dollars (\$100) for each Aggrieved Employee for each initial violation per

1 employee, and two hundred dollars (\$200) for each Aggrieved Employee for each
2 subsequent violation in connection with each payment that was made in violation
3 of Labor Code section 204.

4 **111. Civil Penalties Under Labor Code § 226.3**

- 5 A. Defendants had and have a policy or practice of failing to comply with Labor Code
6 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and
7 Aggrieved Employees with itemized wage statements that accurately reflect: reflect
8 gross wages earned; total hours worked; net wages earned; all applicable hourly
9 rates in effect during the pay period and the corresponding number of hours worked
10 at each hourly rate; and other such information as required by Labor Code section
11 226, subdivision (a).
- 12 B. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
13 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
14 dollars (\$250) per employee per violation in an initial citation and one thousand
15 dollars (\$1,000) per employee for each violation in a subsequent citation, for which
16 the employer fails to provide the employee a wage deduction statement or fails to
17 keep the records required in subdivision (a) of Section 226.”
- 18 C. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
19 this section are in addition to any other penalty provided by law.”
- 20 D. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
21 and have a policy or practice of failing to furnish non-exempt employees,
22 including, without limitation, Plaintiff, itemized wage statements that accurately
23 reflect: reflect gross wages earned; total hours worked; net wages earned; all
24 applicable hourly rates in effect during the pay period and the corresponding
25 number of hours worked at each hourly rate; and other such information as required
26 by Labor Code section 226, subdivision (a).
- 27 E. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
28 entitled to recover civil penalties for Defendants’ violation of Labor Code section

1 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each
2 Aggrieved Employee per pay period for the initial violation, and one thousand
3 dollars (\$1,000) for each Aggrieved Employee per pay period for each subsequent
4 violation.

5 112. **Violation of Labor Code § 558**

6 A. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other
7 person acting on behalf of an employer who violates, or causes to be violated . . .
8 any provision regulating hours and days of work in any of the Industrial Welfare
9 Commission" shall be subject to a civil penalty as follows:

10 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
11 and for each pay period for which the employee was underpaid in addition
12 to an amount sufficient to recover underpaid wages;

13 (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was
15 underpaid in addition to an amount sufficient to recover underpaid wages;

16 (3) Wages recovered pursuant to this section shall be paid to the affected
17 employee."

18 B. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
19 each of them, violated, or caused to be violated, the Labor Code sections described
20 herein, including causing Plaintiff and other Aggrieved Employees not to: be paid
21 with the rates of pay and overtime rates of pay applicable to their employment,
22 allowances claimed as part of the minimum wage, the regular payday designated by
23 Employer, the name of the employer, including any "doing business as" names
24 used, the name, address and telephone number of the workers' compensation
25 insurance carrier, information regarding paid sick leave, and other pertinent
26 information.

27 C. As a direct and proximate result of the herein-described Labor Code violations,
28 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are

entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

113. **Violation of Labor Code § 1174.5**

- A. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required every person employing labor in California to “[a]llow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.”
- B. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required every person employing labor in California to “[k]eep a record showing the names and addresses of all employees employed and the ages of all minors.”
- C. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required every person employing labor in California to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”
- D. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of [Labor Code]

Section 1174 or accurate and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

E. Plaintiff is informed and believes, and based thereon alleges, that Defendants have willfully failed keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174.

F. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five hundred dollars (\$500) per violation per Aggrieved Employee.

114. **Violation of Labor Code § 1197.1**

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

- (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to

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Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

B. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ to pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated damages.

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

115. **Civil Penalties Under Labor Code § 2699**

A. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code

1 may, as an alternative, be recovered through a civil action brought by an aggrieved
2 employee on behalf of himself or herself and other current or former employees
3 pursuant to the procedures specified in Labor Code section 2699.3.

4 B. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the
5 Labor Code except those for which a civil penalty is specifically provided, the
6 established civil penalty for a violation of those provisions is as follows: if, at the
7 time of the alleged violation, the person employs one or more employees, the civil
8 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
9 for the initial violation and two hundred dollars (\$200) for each aggrieved
10 employee per pay period for each subsequent violation.

11 C. Plaintiff is informed and believes and based thereon alleges that Defendants, and
12 each of them, violated the Labor Code sections described herein, including, without
13 limitation, for the failure to: pay the rates of pay and overtime rates of pay
14 applicable to their employment, allowances claimed as part of the minimum wage,
15 the regular payday designated by Defendants, the name of the employer, including
16 any "doing business as" names used, the name, address and telephone number of
17 the workers' compensation insurance carrier, information regarding paid sick leave,
18 and other pertinent information required to be disclosed by Employer under Labor
19 Code section 2810.5, failing to provide Employee and other aggrieved employees
20 with the amount of paid sick leave required to be provided pursuant to California
21 and local laws.

22 D. Moreover, Plaintiff and other Aggrieved Employees within the State of California
23 whom he seeks to represent are entitled to an award of reasonable attorneys' fees
24 and costs in connection with their herein-described claims for civil penalties.

25 **DEMAND FOR JURY TRIAL**

26 116. Plaintiff demands a trial by jury on all causes of action contained herein.

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PRAYER

WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment against Defendants as follows:

- A. An order certifying this case as a Class Action;
- B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's counsel as class counsel;
- C. Damages for all wages earned and owed, including minimum, overtime wages under Labor Code sections 510, 558.1, 1194, 1197 and 1199;
- D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- E. Damages for unpaid premium wages from missed meal and rest periods under, among other Labor Code sections, 512, 558.1 and 226.7;
- F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision (e) and 558.1;
- G. Waiting time penalties under Labor Code sections 203 and 558.1;
- H. Unpaid wages, penalties, and interest for failure to timely pay wages under Labor Code section 210;
- I. Preliminary and permanent injunctions prohibiting Defendants from further violating the California Labor Code and requiring the establishment of appropriate and effective means to prevent future violations;
- J. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;
- K. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- N. For attorneys' fees in prosecuting this action;

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- O. For costs of suit incurred herein; and
- P. For such other and further relief as the Court deems just and proper.

Dated: September 14, 2021

BIBIYAN LAW GROUP, P.C.

BY: 
MALALAI ANBARI
DAVID D. BIBIYAN
Attorneys for Plaintiff ATANASIO GARCIA, and
on behalf of himself and all others similarly situated
and aggrieved

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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 September 14, 2021, and pursuant to the California Code of Civil Procedure section 1010.6, I caused a true and correct copy of the foregoing document(s) described as **FIRST AMEDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** to be served by electronic transmission to the below referenced electronic e-mail address as follows:

Craig D. Fuller
Fuller Law Group, P.C.
9565 Waples Street
Suite 200
San Diego, California 92121
cfuller@fullerlawgroup.co

Counsel for Defendant Nature Fresh Farms, LLC

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

Executed on September 14, 2021 at Beverly Hills, California.



Rosemary Martir