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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

APR 14 2022

BY

MICHAEL WELCH II
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SUPERIOR COURT FOR THE STATE CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

MIGUEL DE ARCOS, and on behalf of others
 similarly situated, and on behalf of the general
 public,

Plaintiffs,

vs.

GH DAIRY, a partnership; HEIN
 HETTINGA, an individual; ELLEN
 HETTINGA, an individual; GERBEN
 HETTINGA, an individual; VACADA LLC, a
 limited liability company; GH DAIRY dba
 EXPRESSWAY DAIRY, a partnership; and
 DOES 1 through 25, inclusive,

Defendants.

CLASS ACTION

Case No. **CIV SB 2207781**

**COMPLAINT FOR DAMAGES,
 PENALTIES, PREJUDGMENT
 INTEREST, ATTORNEYS' FEES, AND
 COSTS**

1. FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE §§ 226.7, 512, 558 AND IWC WAGE ORDER NO. 8-2001
2. FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF LABOR CODE §§ 226.7, 512, 558 AND WAGE ORDERS NO. 8-2001 AND 13-2001
3. FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF LABOR CODE §§ 1182.12, 1194, 1197, AND WAGE ORDERS NO. 8-2001 AND 13-2001
4. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE §§ 510, 558, 1194, 1198 AND WAGE ORDER NO.
5. FAILURE TO PAY WAGES UPON DISCHARGE IN VIOLATION OF LABOR CODE §§ 201, 202 & 203
6. UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES IN VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200 ET SEQ.
7. PAGA CLAIM FOR CIVIL

COMPLAINT

#464 SC. 2022. 27310 • MW

#1000 SC. 2022. 27311 • MW

By Fax

**PENALTIES PUSUANT TO LABOR
CODE §§ 2698 ET SEQ.**

DEMAND FOR JURY TRIAL

Plaintiff Miguel De Arcos ("Plaintiff"), an individual, on behalf of himself and all other persons similarly situated, and on behalf of the general public, complains and alleges as follows:

I. INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of Plaintiff and a Proposed Class defined as:

All person who are employed or have been employed by Defendants GH Dairy, Hein Hettinga, Ellen Hettinga, Gerben Hettinga, Vacada LLC, GH Dairy dba Expressway Dairy, and DOES 1-25 (collectively, "Defendants"), in the State of California who worked one or more pay periods as non-exempt hourly employees or day paid, as Milkers or employed in positions with similar job duties as Milkers, since four (4) years prior to the filing of this action to the present. ("Proposed Class")

2. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a consistent policy of failing to pay wages and/or overtime to all members of the Proposed Class when they worked more than eight hours in a day or forty hours in a week. Plaintiff and other members of the Proposed Class were not properly compensated for overtime at the appropriate rate of pay as required by California state wage and hour laws.

3. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a consistent policy of paying less than the minimum wage to all Proposed Class Members. Plaintiff and other Proposed Class Members were paid less than the minimum wage as required by California state wage and hour laws.

4. From at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a consistent policy and/or practice of failing to inform Proposed Class Members of their right to take uninterrupted meal periods by way of a lawful policy and

1 requiring Proposed Class Members within the State of California, including Plaintiff, to work at
2 least five (5) hours without a meal period and failing to pay such employees one (1) hour of pay at
3 the employees' regular rate of compensation for each workday that the meal period is not provided
4 or provided after five (5) hours, as required by California state wage and hour laws. In addition,
5 Defendants failed to pay meal period premiums as required by California state wage and hour laws
6 for non-compliant meal periods.

7 5. For at least four (4) years prior to the filing of this action and continuing to the
8 present, Defendants have had a consistent policy of failing to inform Proposed Class Members of
9 their right to take rest periods by way of a lawful policy and of failing to provide Proposed Class
10 Members within the State of California, including Plaintiff, rest periods of at least ten (10) minutes
11 per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour
12 of pay at the employee's regular rate of compensation for each workday that a rest period was not
13 provided, as required by California state wage and hour laws.

14 6. For at least three (3) years prior to the filing of this action continuing to the present,
15 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
16 the Proposed Class.

17 7. Plaintiff, on behalf of himself and all Proposed Class Members brings this action
18 pursuant to Labor Code §§ 201, 202, 203, 204(a), 226.7, 510, 512, 558, 558.1, 1182.12, 1194,
19 1197, 1198, 2699.5; Wage Orders No. 8-2001 and 13-2001; and 8 Cal. Code Regs. §§ 11080 and
20 11130, seeking meal and rest period penalties, reporting time pay, payment of all wages earned at
21 the conclusion of employment, overtime premium, payment of minimum wage, and failing to pay
22 all wages earned twice per month, other penalties, injunctive and other equitable relief, and
23 reasonable attorneys' fees and costs.

24 8. Plaintiff, on behalf of himself and all Proposed Class Members, pursuant to
25 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
26 disgorgement of all benefits Defendants enjoyed from their unlawful conduct as described herein.

27 9. Plaintiff also claims civil penalties for the above acts, which violate the California
28 Labor Code, under California Labor Code §§ 2698 *et seq.* (the Private Attorneys General Act

1 (“PAGA”)).

2 II. PARTIES

3 10. Plaintiff Miguel De Arcos (“Plaintiff”) is an adult resident of the County of
4 Riverside, California.

5 11. Plaintiff and all Proposed Class Members, were employed as a Milker, and were
6 responsible for milking cows, cleaning the cows, disinfecting the teats, and operating the milking
7 machines.

8 12. Plaintiff and all Proposed Class Members, were regularly required to: a. Work
9 without being provided compliant meal periods; b. Work without being provided compliant rest
10 periods; c. Work more than eight hours in a day or 40 hours in a week without being paid
11 overtime; d. Work without being paid minimum wage.

12 13. As a result of this conduct, Defendants have engaged in unfair competition and
13 unlawful business practices.

14 14. GH Dairy, a California General Partnership, operating in California including San
15 Bernadino, California. GH Dairy’s address 14651 S. Grove Avenue, Ontario, CA 91762. Upon
16 information and belief, GH Dairy employed Plaintiff and similarly situated persons within
17 California. GH Dairy has done and does business throughout the State of California. GH Dairy has
18 done and is also does business as Expressway Dairy, throughout the State of California.

19 15. Vacada LLC (“Vacada”), is an Arizona Limited Liability Company operating in
20 California including San Bernardino County. Vacada’s address is 14651 S. Grove Avenue,
21 Ontario, CA 91762. Upon information and belief, Vacada employed Plaintiff and similarly
22 situated persons within California. Vacada has done and does business throughout the State of
23 California.

24 16. Defendant Ellen Hettinga (“Ellen”) is an adult resident of Orange County,
25 California. Ellen is and was the owner and operator of GH Dairy, Vacada LLC, and GH Dairy dba
26 Expressway Dairy. Plaintiff is informed and believe, and based thereon allege, that at all relevant
27 times mentioned herein, Defendant Ellen worked as a supervising and managing agent for
28 Defendants. Defendant Ellen is responsible for developing, authorizing, and enforcing personnel

1 and payroll policies that are subject of this lawsuit. By establishing policies and procedures for
2 meal and rest periods and payroll policies at GH Dairy, Vacada LLC, and GH Dairy dba
3 Expressway Dairy, knowingly and intentionally interfered with Plaintiff and similarly situated
4 persons within California receiving and/or taking their meal and rest periods as required under
5 California law.

6 17. Defendant Gerben Hettinga (“Gerben”) is an adult resident of San Bernardino
7 County, California. Gerben is and was the owner and operator of GH Dairy, Vacada LLC, and GH
8 Dairy dba Expressway Dairy. Plaintiff is informed and believe, and based thereon allege, that at all
9 relevant times mentioned herein, Defendant Gerben worked as a supervising and managing agent
10 for Defendants. Plaintiff is informed and believes and based thereon allege, that Defendant
11 Gerben. Defendant Gerben is responsible for developing, authorizing, and enforcing personnel and
12 payroll policies that are subject of this lawsuit. By establishing policies and procedures for meal
13 and rest periods and payroll policies at GH Dairy, Vacada LLC, and GH Dairy – dba Expressway
14 Dairy, knowingly and intentionally interfered with Plaintiffs and similarly situated persons within
15 California receiving and/or taking their meal and rest periods as required under California law.

16 18. The true names and capacities, whether individual, corporate, associate or
17 otherwise of Defendants sued herein as DOES 1 through 25, inclusive, are currently unknown to
18 Plaintiff, who therefore sue Defendants by fictitious names under Code of Civil Procedure section
19 474. Plaintiff will file and serve one or more amendments to this Complaint upon learning the true
20 names and capacities of said Defendants.

21 19. Upon information and belief, Plaintiff alleges that each of the fictitiously named
22 Defendants is responsible in some manner for and proximately cause the injuries and damages
23 sustained by Plaintiff and Proposed Class Members as alleged in this Complaint.

24 20. Upon information and belief, Plaintiff alleges that each of the Defendants named
25 herein acted as the employee, agent, servant, partner, alter-ego, and/or joint venture of one or more
26 of the other Defendants named herein. In doing the acts and/or omissions alleged herein, each of
27 said Defendants acted within the course and scope of his or her relationship with any other
28 Defendants and gave and received full consent, permission, and ratification to the acts and/or

1 omissions alleged herein.

2 **III. JURISDICTION & VENUE**

3 21. This Court has subject matter jurisdiction over all causes of action asserted herein
4 pursuant to Article VI, §) 10 of the California Constitution and California Code of Civil Procedure
5 §) 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
6 exclusive of interest, exceeds \$ 25,000, and because each cause of action asserted arises under the
7 laws of the State of California or is subject to adjudication in the courts of the State of California.

8 22. This Court has personal jurisdiction over Defendants because Defendants have
9 caused injuries in the County of San Bernardino and the State of California through their acts, and
10 by their violation of the California Labor Code, California state common law, and California
11 Business & Professions Code §) 17200, et seq.

12 23. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
13 Civil Procedure §) 395. Defendants operate within California and does business within San
14 Bernardino County. The unlawful acts alleged herein have a direct effect on Plaintiff and all
15 Proposed Class Members within the State of California and the county of San Bernardino.
16 This case should be classified as complex according to Rule 3.400 of the California Rules of
17 Court, and assigned to a complex litigation judge and department, as it will involve substantial
18 documentary evidence, a large number of witnesses, and is likely to involve extensive motion
19 practice raising difficult or novel issues that will be time-consuming to resolve and would require
20 substantial post judgment judicial supervision.

21 **IV. FACTUAL BACKGROUND**

22 24. Plaintiff and the Proposed Class Members are, and at all times pertinent hereto,
23 have been classified as non-exempt employees hourly paid or day paid Milkers employees by
24 Defendants.

25 25. Plaintiff is informed and believes and, based thereon, alleges that GH Dairy,
26 Vacada LLC, and GH Dairy dba Expressway Dairy employed over one hundred (100) non-exempt
27 hourly or day paid Milkers during the Class Period.

28 26. Upon information and belief, Plaintiff and the Proposed Class are covered by

1 California Industrial Welfare Commission Occupational Wage Order No. Wage Orders No. 8-
2 2001 and 13-2001 (Title 8 Cal. Code Regs. §§ 11080 and 11130).

3 27. Generally speaking, Defendants' Milkers' duties include cleaning the cows with
4 water via machine, disinfecting the teats and cleaning them with paper towels, then positioning the
5 cows and the machine to obtain the milk. Milkers were responsible for obtaining as much milk as
6 possible.

7 28. Milkers were required to work twelve (12) or more hours per day.

8 29. Defendants failed to inform Plaintiff and the members of the Proposed Class of
9 their right to take compliant meal periods by way of a lawful policy. In addition, Plaintiff and all
10 Proposed Class Members have been forced by Defendants to work over five (5) hours in one day
11 without being provided a thirty (30) minute uninterrupted meal break and not being compensated
12 one (1) hour of pay at the regular rate of compensation for each workday that a meal period was
13 not provided or provided after five (5) hours, all in violation of California labor laws, regulations,
14 and Industrial Welfare Commission Wage Orders. Members of the Proposed Class routinely did
15 not eat during a shift or ate while performing their job duties. Indeed, members of the putative
16 class were routinely forced to take their meal periods at the end of their shifts after they clocked
17 out.

18 30. Defendants failed to inform Plaintiff and the members of the Proposed Class of
19 their right to take compliant rest periods by way of a lawful policy. In addition, Plaintiff and the
20 Proposed Class have been required to work four-hour increments (or major fractions thereof)
21 without being provided with a ten (10) minute rest period and not being compensated one (1) hour
22 of pay at the regular rate of compensation for each workday that a rest period was not provided or
23 provided after five (5) hours, all in violation of California labor laws, regulations, and Industrial
24 Welfare Commission Wage Orders.

25 31. GH Dairy, Vacada LLC, and GH Dairy dba Expressway Dairy could have and can
26 provide members of the Proposed Class with uninterrupted, off-duty meal and rest periods;
27 however, it has refused and continues to refuse to do so. For example, Defendants could have done
28 the following: (1) scheduled sufficient Milkers on a shift to provide breaks to Plaintiff and all

1 members of the Proposed Class; (2) cross-trained other Defendants' employees so that they could
2 "break" the members of the Proposed Class; and (3) Defendants' exempt employees could have
3 performed members of the Proposed Class' duties while they were on break.

4 32. Members of the Proposed Class have not and do not fall within any exemption to
5 the meal period requirements of the Labor Code and Wage Orders No. 8-2001 and 13-2001.

6 33. Defendants failed to pay overtime premiums to Plaintiff and members of the
7 Proposed Class who worked more than eight (8) hours in a day or more than forty (40) hours in a
8 workweek, as required by Labor Code §§ 510, 558.

9 34. Defendants have failed to pay Plaintiff and members of the Proposed Class
10 minimum wage, in violation of §§ 1194, 1194.2, 1197.1, and Wage Orders 8-2001 and 13-2001.

11 35. Defendants has failed to pay all compensation due and owing at the time of
12 termination or resignation to Plaintiff and the Proposed Class, as required by Labor Code §§ 201
13 and 202.

14 36. During the Class Period, Defendants violated the UCL by engaging in violations of
15 the California wage and hour laws described above.

16 37. During the Class Period, Defendants violated Labor Code §§ §§ 201, 202, 203,
17 204(a), 226.7, 510, 512, 558, 558.1, 1182.12, 1194, 1197, 1198, 2699.5, as described above,
18 thereby entitling Plaintiff or members of the putative class to penalties afforded under PAGA.

19
20 **V. CLASS ACTION ALLEGATIONS**

21 38. Plaintiff brings this action on behalf of himself and all others similarly situated as a
22 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
23 proposed class composed of and defined as follows:

24 All person who are employed or have been employed by Defendants GH Dairy, Hein
25 Hettinga, Ellen Hettinga, Gerben Hettinga, Vacada LLC, GH Dairy dba Expressway Dairy,
26 and DOES 1-25 (collectively, "Defendants"), in the State of California who worked one or
27 more pay periods as non-exempt hourly or day paid employees, as Milkers or employed in
28 positions with similar job duties as Milkers, since four (4) years prior to the filing of this

1 action to the present. (“Proposed Class”)

2 39. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
3 amend or modify the class description with greater specificity, by division into subclasses, or by
4 limitation to particular issues.

5 40. This action has been brought and may properly be maintained as a class action
6 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
7 community of interest in the litigation and the Proposed Classes are easily ascertainable.

8 **Numerosity of Class**

9 41. The potential members of the Proposed Class as defined are so numerous that
10 joinder of all the members of the Proposed Class is impracticable. While the precise number of
11 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
12 that Defendants currently employs, and during the relevant time periods employed over one
13 hundred (100) Milkers employed would fall within members of the Proposed Class.

14 42. Plaintiff alleges that Defendants’ employment records would provide information
15 as to the number and location of all Proposed Class Members. Joinder of all members of the
16 Proposed Class is not practicable.

17 **Commonality**

18 43. There are questions of law and fact common to the Proposed Class that
19 predominates over any questions affecting only individual Proposed Class Members. These
20 common questions of law and fact include, without limitation, whether GH Dairy, Vacada LLC,
21 and GH Dairy dba Expressway Dairy:

22 a. Violated Labor Code §) 226.7 and IWC Wage Orders 8-2001 and 13-2001 or other
23 applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
24 members of their right to take meal periods and by failing to provide required meal
25 periods throughout the term of employment and failing to compensate said
26 employees one (1) hours wages in lieu of meal periods;

27 b. Violated Labor Code §) 226.7 and IWC Wage Orders 8-2001 and 13-2001 or other
28 applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class

1 members of their right to take rest periods and by failing to provide required rest
2 periods throughout the term of employment and failing to compensate said
3 employees in lieu of compliant rest periods;

- 4 c. Violated Labor Code §§ 226.7, 512 and Wage Orders 8-2001 and 13-2001 by
5 failing to provide Plaintiff and the Proposed Class members with required off-duty
6 meal periods and rest periods;
- 7 d. Violated §§ 510 and 558 of the Labor Code and Wage Orders 8-2001 and 13-2001
8 by failing to pay Plaintiff and the Proposed Class members overtime pay for time
9 worked over eight (8) hours in a day or more than forty (40) hours in a week;
- 10 e. Violated §§ 201, 202, and 203 of the Labor Code by failing to pay compensation
11 due and owing at the time that Plaintiff and any Proposed Class Member's
12 employment with Defendants terminated.
- 13 f. Violated Labor Code §§ 1194, 1194.2, 1197.1 and Wage Orders No. 8-2001 and 13-
14 2001 by failing to pay Plaintiff and the Proposed Class members minimum wage
15 for all hours worked.
- 16 g. Violated Labor Code § 204(a) by failing to timely pay Plaintiff and the Proposed
17 Class members their accrued compensation on a bi-monthly basis in violation;
- 18 h. Violated § 17200, et seq. of the Business & Professions Code by engaging in the
19 acts previously alleged; and
- 20 i. Whether Plaintiff and the members of the Proposed Class are entitled to equitable
21 relief pursuant to Business & Professions Code §) 17200, et seq. .

22 **Typicality**

23 44. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
24 all the members of the Proposed Class work or have worked for Defendants as Milkers or in other
25 positions with the same job duties. Plaintiff and all members of the Proposed Class have the same
26 rights based upon California wage and hour laws. Plaintiff all members of the Proposed Class
27 were subjected to the same violations of their rights under California law by Defendants and have
28 suffered damages, including unpaid premium pay for overtime, meal, and rest period violations,

1 resulting from Defendants' wrongful conduct. In addition, Plaintiff and all members of the
2 Proposed Class sustained injuries and damages arising out of and caused by Defendant's common
3 course of conduct in violation of laws, regulations that have the force and effect of law, and
4 statutes as alleged herein.

5 **Adequacy of Representation**

6 45. As Class Representative, Plaintiff will fairly and adequately represent and protect
7 the interests of the members of the Proposed Class. Plaintiff's interests are not in conflict with
8 those of the members of the Proposed Class. Counsel who represents Plaintiff and the Proposed
9 Class are competent and experienced in litigating large employment class actions.

10 **Superiority of Class Action**

11 46. A class action is superior to other available means for the fair and efficient
12 adjudication of this controversy. Individual joinder of all members of the Proposed Class is not
13 practicable, and questions of law and fact common to the Proposed Class predominate over any
14 questions affecting only individual members of the Proposed Class. Each member of the Proposed
15 Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies
16 and/or practices of failing to provide meal and rest periods, failing to pay minimum wage, failing
17 to pay overtime, failing to pay accrued compensation on a bi-monthly basis, and failing to pay all
18 wages upon resignation or termination.

19 47. Class action treatment will allow those similarly situated persons to litigate their
20 claims in the manner that is most efficient and economical for the parties and the judicial system.
21 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
22 action that would preclude its maintenance as a class action.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE §§ 226.7,**

25 **512, 558 AND WAGE ORDERS NO. 8-2001 AND 13-2001**

26 **(Against all Defendants and DOES 1 through 25)**

27 48. Plaintiff realleges and incorporates by reference each and every paragraph as
28 though restated in their entirety herein.

49. Labor Code §§ 226.7, 512 and Wage Orders No. 8-2001 and 13-2001 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work.

50. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants failed to maintain a policy informing Plaintiff and the Proposed Class of these rights. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.

51. Defendants failed to provide Plaintiff and the Proposed Class with proper meal periods of not less than thirty (30) minutes within the first five (5) hours of the shift, and a second meal period for shifts over ten (10) hours as required by the Labor Code during the relevant time period.

52. Pursuant to Labor Code § 226.7, Plaintiff and the members of the Proposed Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to be proven at trial, as well as interest on that amount pursuant to Labor Code § 218.6, plus reasonable attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5.

53. Defendant Hein (a “managing agent”), Defendant Ellen (a “managing agent”) and Defendant Gerben (a “managing agent”) are liable for the minimum wage violations. Under California Labor Code section 558.1, “an owner, director, officer, or managing agent” who “violates, or causes to be violated” section 226.7 of the Labor Code “may be held liable as the employer for such violation.” Defendants Hein, Ellen and Gerben caused the aforementioned violations of the Labor Code.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF LABOR CODE §§ 226.7,

512, 558 AND WAGE ORDERS NO. 8-2001 AND 13-2001

(Against all Defendants and DOES 1 through 25)

54. Plaintiff realleges and incorporates by reference each and every paragraph as

1 though restated in their entirety herein.

2 55. Labor Code §§ 512, 226.7 and Wage Orders No. 8-2001 and 13-2001 requires an
3 employer to pay an additional hour (1) of compensation for each rest period the employer fails to
4 provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours
5 worked (or major fraction thereof).

6 56. For at least four (4) years prior to the filing of this action and continuing to the
7 present, Defendants failed to maintain a policy informing Plaintiff and the Proposed Class of these
8 rights.

9 57. Plaintiff and the Proposed Class consistently worked shifts with no rest breaks.
10 Defendants failed to provide Plaintiff and the Proposed Class with rest breaks of not less than ten
11 (10) minutes as required by the Labor Code during the relevant time period.

12 58. Pursuant to Labor Code §) 226.7, Plaintiff and the Proposed Class are entitled to
13 damages in an amount equal to one (1) hour of wages per missed rest period, as well as interest on
14 that amount pursuant to Labor Code § 218.6, plus reasonable attorneys' fees and costs pursuant to
15 Code of Civil Procedure § 1021.5.

16 59. Defendant Hein (a "managing agent"), Defendant Ellen (a "managing agent") and
17 Defendant Gerben (a "managing agent") are liable for the minimum wage violations. Under
18 California Labor Code section 558.1, "an owner, director, officer, or managing agent" who
19 "violates, or causes to be violated" section 226.7 of the Labor Code "may be held liable as the
20 employer for such violation." Defendants Hein, Ellen and Gerben caused the aforementioned
21 violations of the Labor Code.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§ 558,**
24 **1182.12, 1194, 1197, AND WAGE ORDERS NO. 8-2001 AND 13-2001**
25 **(Against All Defendants and DOES 1 through 25)**

26 60. Plaintiff realleges and incorporates by reference each and every paragraph as
27 though restated in their entirety herein.

28 61. Labor Code §§ 1194, 1194.2, and 1197, prohibits an employer to suffer or permit a

1 California employee to work without paying wages at the proper minimum wage for all time
2 worked as required by the applicable Wage Orders No. 8-2001 and 13-2001.

3 62. Wage Orders No. 8-2001 and 13-2001, subdivision 2(k), states at all times material
4 hereto, “hours worked” included “the time during which an employee is subject to the control of
5 an employer and includes all the time the employee is suffered or permitted to work, whether or
6 not required to do so.”

7 63. For at least four (4) years prior to the filing of this action and continuing to the
8 present, Defendants failed to maintain a policy informing Plaintiff and the Proposed Class of these
9 rights.

10 64. Labor Code § 1197 states, in full: “The minimum wage for employees fixed by the
11 commission is the minimum wage to be paid to employees, and the payment of a less wage than
12 the minimum so fixed is unlawful.”

13 65. Labor Code § 1194, subdivision (a), states that “any employee receiving less than
14 the legal minimum wage or the legal overtime compensation applicable to the employee is entitled
15 to recover in a civil action the unpaid balance of the full amount of this minimum wage or
16 overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

17 66. Labor Code § 1197.1 provides that: “(a) Any employer or other person acting
18 either individually or as an officer, agent, or employee of another person, who pays or causes to be
19 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or
20 by order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
21 damages payable to the employee, and any applicable penalties imposed pursuant to Section 203
22 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
23 for each underpaid employee for each pay period for which the employee is underpaid. ... (2) For
24 each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each
25 underpaid employee for each pay period for which the employee is underpaid regardless of
26 whether the initial violation is intentionally committed. This amount shall be in addition to an
27 amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and
28 any applicable penalties imposed pursuant to Section 203.”

67. Defendants failed to pay Plaintiff or the members of the Proposed Class at least the minimum wage for all hours worked. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and aggrieved employees were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work done.

68. Defendants' failure to pay Plaintiff and the members of the Proposed Class the minimum wage as required violates Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections, Plaintiff and members of the Proposed Class are entitled to recover the unpaid balance of her minimum wage compensation, as well as interest, costs, and attorney's fees.

69. Pursuant to Labor Code section 1194.2 and Wage Orders No. 8-2001 and 13-2001, Plaintiff and the members of the Proposed Class are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

70. Defendant Hein (a “managing agent”), Defendant Ellen (a “managing agent”) and Defendant Gerben (a “managing agent”) are liable for the minimum wage violations. Under California Labor Code section 558.1, “an owner, director, officer, or managing agent” who “violates, or causes to be violated” section 1194 of the Labor Code “may be held liable as the employer for such violation.” Defendants Hein, Ellen and Gerben caused the aforementioned violations of the Labor Code.

FOURTH CAUSE OF ACTION

**FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE §§ 510, 558,
1194, 1198 AND WAGE ORDERS NO. 8-2001 AND 13-2001
(Against all Defendants and DOES 1 through 25)**

71. Plaintiff realleges and incorporates by reference each and every paragraph as though restated in their entirety herein.

72. Labor Code §510 and the “Hours and Days of Work” section of Wage Order 8-2001 and 13-2001 entitle non-exempt employees to one and one-half times their hourly rate of pay for and time worked after eight (8) hours in any workday or more than forty (40) hours in any workweek.

73. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants failed to maintain a policy informing Plaintiff and the Proposed Class of these rights.

74. Plaintiff and members of the Proposed Class regularly worked in excess of eight (8) hours per day without overtime compensation, among other things.

75. By failing to pay overtime compensation to Plaintiff and members of the Proposed Class, Defendants violated and continue to violate Labor Code §§ 510, 558.1, 1194, and Wage Orders No. 8-2001 and 13-2001.

76. As a result of Defendants' unlawful actions, Plaintiff and members of the Proposed Class have been deprived of overtime compensation in an amount to be determined at trial and are entitled under Labor Code § 1194 recovery of such amounts, plus interest thereon, attorneys' fees and costs.

77. Defendant Hein (a “managing agent”), Defendant Ellen (a “managing agent”) and Defendant Gerben (a “managing agent”) are liable for the minimum wage violations. Under California Labor Code section 558.1, “an owner, director, officer, or managing agent” who “violates, or causes to be violated” section 1194 of the Labor Code “may be held liable as the employer for such violation.” Defendants Hein, Ellen and Gerben caused the aforementioned violations of the Labor Code.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON DISCHARGE IN VIOLATION OF

LABOR CODE §§ 201, 202 & 203

(Against all Defendants and DOES 1 through 25)

78. Plaintiff realleges and incorporates by reference each and every paragraph as though restated in their entirety herein.

79. California Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing immediately at the time of discharge, layoff, or resignation made with at least seventy-two (72) hours' notice, or within seventy-two (72) hours of resignation made without seventy-two (72) hours' notice.

80. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants failed to maintain a policy informing Plaintiff and the Proposed Class of these rights.

81. As of the date of the filing of this Complaint, Defendants has willfully failed to pay Plaintiff, current and former employee members of the Proposed Class all compensation earned. As a result, Plaintiff, current and former employee members of the Proposed Class are entitled to recover from GH Dairy an additional sum, pursuant to California Labor Code § 203, equal to a day's wages for thirty (30) days, including interest thereon, plus reasonable attorneys' fees and costs of suit.

82. Defendant Hein (a “managing agent”), Defendant Ellen (a “managing agent”) and Defendant Gerben (a “managing agent”) are liable for the minimum wage violations. Under California Labor Code section 558.1, “an owner, director, officer, or managing agent” who “violates, or causes to be violated” section 1194 of the Labor Code “may be held liable as the employer for such violation.” Defendants Hein, Ellen and Gerben caused the aforementioned violations of the Labor Code.

SIXTH CAUSE OF ACTION

**UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES IN VIOLATION OF
BUSINESS & PROFESSIONS CODE §§ 17200 *ET SEQ.***

(Against GH Dairy, Vacada LLC, GH Dairy dba Expressway Dairy, and DOES 1 through 25)

83. Plaintiff realleges and incorporates by reference each and every paragraph as though restated in their entirety herein.

84. Business & Professions Code §§ 17200, *et seq.*, prohibits businesses from engaging in unlawful, unfair, or fraudulent business practices. GH Dairy, Vacada LLC, and GH Dairy dba Expressway Dairy's illegal policy and/or practice of failing to provide members of the Proposed Class with required off-duty meal periods and rest periods, failing to provide members of the Proposed Class with minimum wage, failing to pay overtime pay, failing to timely pay members of the Proposed Class wages due at the conclusion of employment with GH Dairy, Vacada LLC,

1 and GH Dairy dba Expressway Dairy and failing to timely pay members of the Proposed Class
2 their accrued compensation on a bi-monthly basis constitute unlawful acts prohibited by the UCL.

3 85. Plaintiff and the members of the Proposed Class have suffered injury in fact and
4 lost money or property pursuant to Business & Professions Code § 17204 as a result of these
5 unlawful and/or unfair business practices.

6 86. As a result of these unlawful acts, GH Dairy, Vacada LLC, and GH Dairy-
7 Expressway Dairy has reaped unfair benefits and illegal profits at the expense of Plaintiff and all
8 similarly situated members of the Proposed Class. Plaintiff and the members of the Proposed Class
9 are therefore entitled to an order of restitution requiring GH Dairy, Vacada LLC, and GH Dairy
10 dba Expressway Dairy to restore to Plaintiff and the members of the putative class the money
11 which GH Dairy has acquired by means of their unfair business practices, including missed meal
12 and rest period wages and interest, all unlawfully withheld from members of the Proposed Class
13 who were employed at any time during the Class Period. All such remedies are cumulative of
14 relief available under other laws, pursuant to Business & Professions Code § 17205.

15 **SEVENTH CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT (PAGA) CLAIM FOR CIVIL PENALTIES**

17 **(LABOR CODE §§ 2698 *ET SEQ.*)**

18 **(Against GH Dairy, Vacada LLC, GH Dairy dba Expressway Dairy, and DOES 1 through**
19 **25)**

20 87. Plaintiff realleges and incorporates by reference each and every paragraph as
21 though restated in their entirety herein.

22 88. Plaintiff and the members of the Proposed Class are aggrieved employees as
23 defined in Labor Code §2699(a). As such, Plaintiff seeks to recover, on behalf of themselves and
24 all other current and former aggrieved employees affected by the Labor Code violations alleged in
25 this Complaint, the civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

26 89. Plaintiff seeks to recover the PAGA penalties through a representative action as
27 permitted by PAGA. Therefore, class certification of the PAGA claims is not required, although
28 Plaintiff may choose to seek certification of the PAGA claims.

90. Defendants have committed the following violations of the Labor Code against Plaintiff and other current and former aggrieved employees:

a. Defendants violated Labor Code §§ 201, 202, 203, 204(a), 226.7, 510, 512, 558, 558.1, 1182.12, 1194, 1197, 1198, 2699.5 based upon the conduct described in this Complaint.

91. Plaintiff has fully complied with the procedural requirements specified in Labor Code § 2699.3 as to each of the alleged violations. On August 20, 2021, Plaintiff provided notice to GH Dairy, Vacada LLC, GH Dairy dba Expressway Dairy, and the California Labor & Workforce Development Agency (“LWDA”) of Plaintiff’s claims based on the alleged Labor Code violations, including the facts and theories supporting these claims. The LWDA has provided no notice to Plaintiff within thirty-three (33) calendar days of the postmark date of that notice regarding its intentions to investigate or not investigate Plaintiff’s claims. Accordingly, Plaintiff may commence this action pursuant to Labor Code § 2699.

92. Plaintiff and the members of the Proposed Class also seek injunctive relief ordering GH Dairy in the form and manner proven at trial, but at least ordering GH Dairy, Vacada LLC, and GH Dairy dba Expressway Dairy to comply with the Labor Code sections that it has violated.

93. Enforcement of statutory provisions to protect workers and to ensure proper and prompt payment of wages is a fundamental public interest. Plaintiff's successful enforcement of important rights affecting the public interest will confer a significant benefit upon the general public. Private enforcement of these rights is necessary, as no public agency has pursued enforcement. Plaintiff is incurring a financial burden in pursuing this action. It would be against the interests of justice to require the payment of attorneys' fees and costs from any recovery obtained, pursuant to, *inter alia*, Labor Code § 2699.

94. As a result of the violations alleged, Plaintiff, as an aggrieved employee on behalf of himself and other aggrieved employees, seek all civil penalties available pursuant to Labor Code § 2699, including all civil penalties, attorneys' fees, expenses, and costs of suit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. Certification of Plaintiff's claims as a class action, pursuant to Code of Civil Procedure § 382, on behalf of the proposed class;
2. Class notices to all members of the Proposed Class in California who worked for GH Dairy, Vacada LLC, and GH Dairy dba Expressway Dairy from February 16, 2018, through the trial in this action, pursuant to the statute of limitations on the UCL claims, Business & Professions Code § 17208;
3. A declaratory judgment that as to Plaintiff and the members of the Proposed Class, Defendants have violated Labor Code §§ 226.7 and 512 and Wage Orders No. 8-2001 and 13-2001 by failing to permit and authorize off-duty uninterrupted meal periods;
4. A declaratory judgment that as to Plaintiff and the members of the putative class, Defendants have violated Labor Code § 226.7 and Wage Orders No. 8-2001 and 13-2001 by failing to permit and authorize rest periods;
5. A declaratory judgment that as to Plaintiff and the members of the putative class, Defendants have violated Labor Code § 1182.12, 1194, 1197 and Wage Orders No. 8-2001 and 13-2001 by failing to pay them at the applicable minimum wage for their hours worked;
6. A declaratory judgment that as to Plaintiff and the members of the Proposed Class, GH Dairy, Vacada LLC, and GH Dairy dba Expressway Dairy have failed to pay minimum wages in violation of Labor Code § 1194, 1197, 1197.1;
7. A declaratory judgment that as to Plaintiff and the members of the Proposed Class, Defendants have failed to pay overtime compensation in violation Labor Code §§ 510, 558, 558.1;
8. A declaratory judgment that as to Plaintiff and the members of the Proposed Class, Defendants have willfully failed to pay compensation at the conclusion of employment in violation of Labor Code §§ 201, 202 and 203;
9. A declaratory judgment that GH Dairy, Vacada LLC, and GH Dairy dba Expressway Dairy have violated the UCL by failing to provide members of the Proposed Class with required off-duty meal periods and rest periods, knowingly and intentionally failing to

- 1 provide members of the Proposed Class with an accurate itemized wage statement
2 showing total hours worked and total wages earned, failing to timely pay Milkers
3 wages due at the conclusion of employment with GH Dairy, Vacada LLC, GH Dairy
4 dba Expressway Dairy and failing to timely pay members of the Proposed Class their
5 accrued compensation on a bi-monthly basis, as required by California law;
- 6 10. A declaratory judgment that GH Dairy, Vacada LLC, and GH Dairy dba Expressway
7 Dairy are liable to Plaintiff and the members of the Proposed Class under PAGA for
8 the violations of the Labor Code set forth above;
- 9 11. An award to Plaintiff and the members of the Proposed Class of one (1) hour of
10 additional pay at the regular rate of compensation for each workday that meal periods
11 were not permitted or authorized pursuant to Labor Code §§ 226.7 and 512 and IWC
12 Wage Orders No. 8-2001 and 13-2001;
- 13 12. An award to Plaintiff and the members of the Proposed Class of one (1) hour of
14 additional pay at the regular rate of compensation for each workday that rest periods
15 were not permitted or authorized pursuant to Labor Code § 226.7 and Wage Orders No.
16 8-2001 and 13-2001;
- 17 13. An award of damages to Plaintiff and the members of the Proposed Class for GH
18 Dairy, Vacada LLC, and GH Dairy dba Expressway Dairy's failure to pay overtime
19 wages in violation of Labor Code § 510;
- 20 14. An award of damages to Plaintiff and the members of the Proposed Class for GH
21 Dairy, Vacada LLC, and GH Dairy dba Expressway Dairy's failure to pay minimum
22 wages pursuant to Labor Code §§ 1182.12, 1194, 1197;
- 23 15. An award of payments due to Plaintiff and the members of the Proposed Class who
24 have left GH Dairy, Vacada LLC, and GH Dairy dba Expressway Dairy's employ, as
25 waiting time penalties, pursuant to Labor Code § 203;
- 26 16. An order requiring GH Dairy, Vacada LLC, and GH Dairy dba Expressway Dairy to
27 pay restitution of all amounts owed to Plaintiff and the members of the Proposed Class
28 for failing to provide members of the Proposed Class with required off-duty meal

1 periods and rest periods, knowingly and intentionally failing to provide members of the
2 Proposed Class with an accurate itemized wage statement showing total hours worked
3 and total wages earned, failing to timely pay members of the Proposed Class' wages
4 due at the conclusion of employment with GH Dairy and failing to timely pay members
5 of the Proposed Class their accrued compensation on a bi-monthly basis, in an amount
6 according to proof, pursuant to Business & Professions Code § 17203;

7 17. An award of civil penalties and attorneys' fees and costs pursuant to Labor Code §
8 2698, *et seq.* (PAGA).

9 18. An order permanently enjoining GH Dairy, Vacada LLC, and GH Dairy dba
10 Expressway Dairy from engaging in the practices challenged herein;

11 19. Interest accrued to date;

12 20. An award to Plaintiff and the members of the Proposed Class of reasonable attorneys'
13 fees and costs, pursuant to Code of Civil Procedure 1021.5, Labor Code §§ 226, 226.7,
14 1197.1, 2699(g) and/or other applicable law; and,

15 21. An award of such other and further relief as this Court may deem appropriate.

16 **DATED: April 13, 2022**

Genie Harrison Law Firm, APC

17
18 **By:** 

**Genie Harrison, Esq.
Jennifer Ostertag, Esq.
Andrea Fields, Esq.
Attorneys for Plaintiff
Miguel De Arcos**

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DEMAND FOR JURY TRIAL

Plaintiff Miguel De Arcos, on behalf of himself and all other persons similarly situated,
and on behalf of the general public hereby demand trial by jury to the extent authorized by law.

DATED: April 13, 2022

Genie Harrison Law Firm, APC

By: 

**Genie Harrison, Esq.
Jennifer Ostertag, Esq.
Andrea Fields, Esq.
Attorneys for Plaintiff
Miguel De Arcos**