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

OCT 22 2021

BY *[Signature]*
JACQUELINE HARNES, DEPUTY

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN BERNARDINO**

12
13 CECILIA CHOLICO, individually, and on
14 behalf of all other aggrieved employees,

15 Plaintiff,

16 v.

17 RILEY FAMILY ENTERPRISES, INC., a
18 California corporation; and DOES 1 through
19 50, inclusive,

20 Defendant,

Case No.: **CIV SB 2130458**

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

[California Labor Code § 2698 et seq.]

By Fax

1 Plaintiff Cecilia Cholico ("Plaintiff") brings this representative action, individually and on
2 behalf of all other aggrieved employees, to recover civil penalties relating to systematic violations
3 of California wage and hour laws by Riley Family Enterprises, Inc. ("Riley Enterprises" or
4 "Defendant"). Plaintiff makes the following allegations on information and belief, except as to
5 allegations pertaining to Plaintiff individually, which are based on her personal knowledge.

6 **INTRODUCTION**

7 1. Defendant does business as Riley Family Enterprises, Inc. Defendant operates an
8 apple orchard, a packing house, store and bakery, operating year round.

9 2. Defendant's orchard, packing house, store and bakery are crowded with customers
10 and are grossly understaffed. As a result of systematic policies and practices, Defendant has
11 violated California's wage and hour laws, as promulgated in the California Labor Code and
12 Industrial Welfare Commission ("IWC") Wage Order Nos. 8-2001, 13-2001, 14-2001 and all
13 other applicable IWC Wage Order. For example, Defendant attempts to maximize profits by
14 cutting labor costs and implementing unlawful policies and practices, including but not limited to,
15 grossly understaffing its orchard, packing house, store and bakery, denying meal and rest breaks,
16 and cheating their employees out of wages and premiums.

17 3. This case involves all non-exempt employees of Defendant who have worked for
18 Defendant in the State of California from August 17, 2020 to present ("Statute of Limitations
19 Period"). Hereinafter, these employees are referred to as "Aggrieved Employees."

20 **JURISDICTION AND VENUE**

21 4. The Superior Court of the State of California has jurisdiction in this matter because
22 Plaintiff is a resident and citizen of the State of California. Defendant is a corporation licensed
23 under the laws of the State of California. No federal question is at issue because Plaintiff's claims
24 are based solely on California law.

25 5. Venue is proper in this judicial district and the County of San Bernardino because
26 Plaintiff and other Aggrieved Employees performed work for Defendant in the County of San
27 Bernardino, and many of Defendant's unlawful actions and omissions, as set alleged herein,
28 occurred in the County of San Bernardino. Specifically, Plaintiff and the Aggrieved Employees,

1 worked at Defendant's orchard, packing house, store and bakery located in Oak Glen, California,
2 which is situated in San Bernardino County.

3 **PLAINTIFF**

4 6. Plaintiff is a resident and citizen of the State of California and a former employee
5 of Defendant. Plaintiff in Defendant's bakery and store which is located 39611 Oak Glen Road,
6 Yucaipa, California 92399.

7 7. Plaintiff, on behalf of herself, and all other Aggrieved Employees, brings this
8 representative action to recover civil penalties for, *inter alia*, Defendant's failure to: provide
9 legally compliant meal periods and rest breaks; recovery periods; provide proper compensation for
10 missed and otherwise unlawful meal periods and rest breaks and recovery periods; pay overtime
11 and minimum wages; pay all wages due to discharged or quitting non-exempt employees; to
12 maintain required records; maintain required records and provide accurate itemized wage
13 statements; provide sick leave; provide supplemental COVID-19 paid sick leave; indemnify
14 employees for necessary expenditures incurred in discharging their duties; provide suitable resting
15 facilities; provide suitable seating; and provide required information at the time of hiring.

16 **DEFENDANT**

17 8. Defendant, as noted above, operates an apple orchard, packing house, restaurant
18 and store located on its orchard, and at all times relevant herein was and is, a California
19 corporation authorized to conduct business in the state of California.

20 9. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
21 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff
22 is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
23 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other
24 Aggrieved Employees' injuries and damages, as alleged herein, were proximately caused by the
25 conduct of such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to
26 allege the true names and capacities of such DOE defendants when ascertained.

1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 10. Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor
3 Code §§ 2698-2699.5, Plaintiff brings this action on behalf of herself and all other aggrieved
4 employees – i.e., all current and former non-exempt employees who worked for Defendant in the
5 State of California at any time during the statute of limitations period.

6 11. On August 17, 2021, Plaintiff gave written notice by certified mail, pursuant to
7 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
8 (“LWDA”) and Defendant, of the specific provisions of the California Labor Code and IWC Wage
9 Order alleged to have been violated, including the facts and theories to support the alleged
10 violations. As of the date of this filing, Plaintiff has not received any response from the LWDA.
11 As Plaintiff has waited more than sixty-five (65) days from the postmark date of her written notice
12 before filing this action, Plaintiff has complied with all of the requirements set forth in California
13 Labor Code § 2699.3 to commence a representative action under PAGA.

14 **FACTUAL ALLEGATIONS**

15 **Failure to Provide Required Meal Periods**

16 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 8-2001, § 11**

17 **and all other applicable IWC Wage Orders]**

18 12. During the statute of limitations period, Defendant has required, permitted or
19 otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods,
20 to completely skip their meal periods, to take late and short meal periods, and Defendant has
21 otherwise failed to provide the required meal periods to Plaintiff and aggrieved employees as
22 required under California Labor Code §§ 226.7, 512, and § 11 of the applicable IWC Order.

23 13. Defendant has implemented several policies and practices that have caused Plaintiff
24 and aggrieved employees to systematically miss and otherwise take non-compliant meal periods.
25 Defendant implements a skeletal staffing policy such that Plaintiff and aggrieved employees are
26 given so much work to complete that they regularly miss or take non-compliant meal periods. As a
27 direct consequence of these policies and practices, Plaintiff and aggrieved employees have so
28 much work to complete within their scheduled shifts that they are forced to skip their meal periods

1 altogether, to take them after working longer than five (5) hours, to perform work during their
2 meal periods, or return to work after taking less than a thirty (30) minute meal period. Defendant
3 also failed to notify Plaintiff and aggrieved employees with regard to their rights to take a second
4 meal periods during shifts longer than ten (10) hours and thus aggrieved employees like Plaintiff
5 were unaware of their rights.

6 14. Further, Defendant's policy is to not inform Plaintiff and aggrieved employees that
7 they are able to take meal periods before the fifth hour of work. This policy, combined with an
8 unreasonable workload, results in systematic late meal periods taken by Plaintiff and aggrieved
9 employees.

10 15. Defendant also has no policy to provide second meal periods when Plaintiff and
11 aggrieved employees work shifts longer than ten hours. This is in direct contravention of
12 California law. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041
13 ("We conclude that, absent waiver, section 512 requires a first meal period no later than the end of
14 an employee's fifth hour of work, and a second meal period no later than the end of an employee's
15 10th hour of work.")

16 16. Despite work conditions that systematically result in missed and non-compliant
17 meal periods, and in order to keep labor costs down, Defendant has implemented a policy and
18 practice of not paying meal period premium payments that are owed and due. This policy is in
19 direct contravention of California law, which requires Defendant to pay one hour at the
20 employee's regular rate of pay for a missed or interrupted meal period.

21 17. In sum, Defendant has violated California Labor Code §§ 226.7, § 11 of the
22 applicable IWC Wage Order, by failing to compensate Plaintiff and aggrieved employees who
23 were not authorized and permitted to take a complete, timely, uninterrupted meal period, one
24 additional hour of compensation at the proper regular rate of pay for each workday that such a
25 meal period was not authorized or permitted. Defendant further violated California Labor Code
26 sections 226.7, 510, 558, 1194, 1197, and § 11 of the applicable IWC Wage Order by failing to
27 compensate Plaintiff and Class members for all hours worked during their meal periods.

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1 temperatures exceeding 80 degrees Fahrenheit, and sometimes in excess of 100 degrees
2 Fahrenheit. Despite these work conditions, Defendant has failed to implement a policy or practice
3 of providing sufficient recovery periods to their non-exempt employees. Defendant has similarly
4 failed to make efforts to comply with heat illness prevention regulations by providing places of
5 shade for recovery periods or by supplying sufficient amounts of drinking water. Aggrieved
6 employees were never informed by Defendant that they were entitled to take recovery periods, and
7 thus they never took them.

8 23. Defendant further violated California Labor Code § 226.7 by failing to pay
9 aggrieved employees who were not provided with a recovery period, one additional hour of
10 compensation at the proper regular rate of pay for each workday that a recovery period was not
11 provided.

12 **Failure to Pay Overtime Wages**

13 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 8-2001, § 3**

14 **and all other applicable IWC Wage Orders]**

15 24. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 8-
16 2001, § 3, and all other applicable IWC Wage Orders, Defendant is required to compensate
17 Plaintiff and other aggrieved employees for all overtime, which is calculated at one and one-half
18 (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or
19 forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday,
20 with double time for all hours worked in excess of twelve (12) hours in any workday and for all
21 hours worked in excess of eight (8) hours on the seventh consecutive day of work in any
22 workweek.

23 25. Plaintiff and other aggrieved employees are current and former non-exempt
24 employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage
25 Order No. 8-2001 and all other IWC Wage Orders. During the statute of limitations period,
26 Defendant failed to compensate Plaintiff and other aggrieved employees for all overtime hours
27 worked as required under the foregoing provisions of the California Labor Code and IWC Wage
28 Order by, among other methods, failing to pay overtime at one and one-half (1½) or double the

1 regular rate of pay as provided by California Labor Code §§ 510, 1194 and IWC Wage Order No.
2 1-2001, § 3 and all other applicable IWC Wage Orders, requiring, permitting or suffering Plaintiff
3 and other aggrieved employees to work off-the-clock, and to work through meal periods and rest
4 breaks, but not compensating them for this time, unlawful rounding of time worked so as to
5 deprive Plaintiff and the other aggrieved employees of overtime wages in favor of Defendant, not
6 properly calculating the overtime rate of pay for Plaintiff and the other aggrieved employees based
7 upon the payment of non-discretionary bonuses, and other methods to be discovered.

8 26. Defendant has knowingly and willfully refused to perform its obligations to
9 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
10 violation of California Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 1-2001, § 3
11 and all other applicable IWC Wage Orders.

12 **Failure to Pay Minimum Wages**

13 **[Cal. Lab. Code §§ 1194, 1197; § 4 of the applicable IWC Wage Orders]**

14 27. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage
15 Order, payment to an employee of less than the applicable minimum wage for all hours worked in
16 a payroll period is unlawful.

17 28. During the statute of limitations period, the hourly rates for Plaintiff and other
18 aggrieved employees were precisely at California minimum wage. Based on this common
19 practice, Defendant failed to pay Plaintiff and other aggrieved employees minimum wages for all
20 hours worked by requiring, permitting or suffering Plaintiff and other aggrieved employees to
21 work off the clock, such as requiring them to work through meal and rest breaks but not
22 compensating them for this time, unlawful rounding of time worked by Plaintiff and the other
23 aggrieved employees in favor of Defendant, and failing to include this time in all hours worked,
24 and other methods to be discovered.

25 29. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and §
26 4 of the applicable IWC Wage Orders. As a proximate result of the aforementioned violations,
27 Plaintiff and other aggrieved employees have been damaged in an amount according to proof at
28 trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other

1 applicable law, Plaintiff and other aggrieved employees are entitled to recover the unpaid balance
2 of wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs
3 of suit.

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

5 **[Cal. Lab. Code § 204]**

6 30. Pursuant to California Labor Code § 204, for all labor performed between the 1st
7 and 15th days of any calendar month, Defendant is required to pay its nonexempt employees
8 between the 16th and 26th day of the month during which the labor was performed. California
9 Labor Code § 204 also provides that for all labor performed between the 16th and 26th days of any
10 calendar month, Defendant is required to pay its non-exempt employees between the 1st and 10th
11 day of the following calendar month. In addition, California Labor Code § 204 provides that all
12 wages earned for labor in excess of the normal work period shall be paid no later than the payday
13 of the next regular payroll period.

14 31. During the statute of limitations period, Defendant has knowingly and willfully
15 failed to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by
16 the next regular payroll period as required by California Labor Code § 204.

17 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

18 **[Cal. Lab. Code §§ 201, 202, 203]**

19 32. Pursuant to California Labor Code § 201, 202 and 203, Defendant is required to
20 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
21 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
22 at the time of discharge are due and payable immediately.

23 33. Furthermore, pursuant to California Labor Code § 202, Defendant is required to
24 pay all accrued wages due to an employee no later than 72 hours after the employee quits his or
25 her employment, unless the employee provided 72 hours previous notice of his or her intention to
26 quit, in which case the employee is entitled to his or her wages at the time of quitting.

27 34. California Labor Code § 203 provides that if an employer willfully fails to pay, in
28 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who

1 quits, the employer is liable for waiting time penalties in the form of continued compensation to
2 the employee at the same rate for up to 30 workdays.

3 35. During the statute of limitations period, Defendant has willfully failed to pay
4 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance
5 with California Labor Code §§ 201 and 202. Because Defendant has failed and continues to fail to
6 properly compensate Plaintiff and other aggrieved employees for all hours worked when due,
7 overtime wages based upon illegal rounding of time worked, failing to include non-discretionary
8 bonus payments in the rate of pay of Plaintiff and the other aggrieved employees, failing to pay all
9 wages due based upon unlawful rounding, and compensation for non-compliant meal periods and
10 rest breaks, Defendant has also willfully failed and continues to fail to pay accrued wages and
11 other compensation to Plaintiff and other aggrieved employees in accordance with California
12 Labor Code §§ 201 and 202.

13 **Failure to Maintain Required Records**

14 **[Cal. Lab. Code §§ 226(a), 1174(d); IWC Wage Order No. 8-2001, § 7**

15 **and all other applicable IWC Wage Orders]**

16 36. During the statute of limitations period, as part of Defendant's illegal payroll
17 policies and practices to deprive Plaintiff and other aggrieved employees of all wages earned and
18 due, Defendant knowingly and intentionally failed to maintain records as required under
19 California Labor Code §§ 226(a) and 1174(d) and IWC Wage Order No. 8-2001, § 7 and all
20 applicable IWC Wage Orders, including but not limited to the following records: total daily hours
21 worked by each aggrieved employee; applicable rates of pay; all deductions; meal periods; time
22 records showing when each employee begins and ends each work period; and accurate itemized
23 wage statements.

24 37. Among other things, Defendant has systematically failed to maintain records of
25 when Plaintiff and aggrieved employees take meal periods (when they are able to take them). In
26 addition, Defendant had knowledge that it was not providing its non-exempt employees with
27 proper meal and rest periods, but knowingly failed to include in the wage statements one (1) extra
28 hour of compensation for each missed meal and rest period. Defendant also illegally and

1 inaccurately recorded the time in which Plaintiff and other aggrieved employees worked. Next,
2 Defendant also failed to maintain records relating to accurate records of all available COVID-19
3 and COVID-19 supplemental sick leave available to Plaintiff and the other aggrieved employees
4 in violation of Labor Code §§246, 248.1 and 248.2.

5 **Failure to Furnish Accurate Itemized Wage Statements**

6 **[Cal. Lab. Code § 226(a); IWC Wage Order No. 8-2001, § 7**

7 **and all other applicable IWC Wage Orders]**

8 38. During the statute of limitations period, Defendant has routinely failed to provide
9 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
10 Defendant's pay stubs violate California Labor Code § 226 on their face by, among other things,
11 by not including non-discretionary bonus payments to Plaintiff and the other aggrieved employees
12 rate of pay, unlawful rounding of hours worked in such a one-sided manner resulting in the failure
13 to pay all wages due to Plaintiff and the other aggrieved employees, failing to accurate shall all
14 available COVID-19 and COVID-19 supplemental sick leave available to Plaintiff and the other
15 aggrieved employees in violation of Labor Code §§246, 248.1 and 248.2, and not providing
16 Plaintiff and other aggrieved employees with proper meal periods and rest breaks but intentionally
17 failing to include in their wage statements one (1) additional hour of compensation at their regular
18 rates of pay for each non-compliant meal period or rest break, and other inaccuracies yet to be
19 discovered.

20 39. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
21 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage
22 statements in accordance with Labor Code § 226(a) IWC Wage Order No. 8-2001 § 7 and all other
23 applicable IWC Wage Orders.

24 40. Plaintiff and other aggrieved employees suffered injury as a result of Defendant's
25 failure to provide timely and accurate itemized wage statements because it prevented them from
26 discovering the scope and extent of Defendant's violations of California wage and hour laws,
27 prevented them from being able to determine the gross wages earned, the total hours worked, all
28 deductions made, the net wages earned, all applicable hourly rates in effect during each pay period

1 and the corresponding number of hours worked at each hourly rate, or even the name of the legal
2 entity that employed them.

3 **Failure To Provide And Properly Calculate Mandatory California Sick Leave**

4 **[Cal. Labor Code §246]**

5 41. Pursuant to California Labor Code §246, any employee who works in the State of
6 California and who works more than “30 or more days within a year ... is entitled to be paid sick
7 days ...” Labor Code §246(l) provides an employer shall calculate sick pay under the following
8 methods: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as
9 the regular rate of pay for the workweek in which the employee uses paid sick time, whether or
10 not the employee actually works overtime in that workweek.” Alternatively, pursuant to Labor
11 Code §246(l)(2), states, “Paid sick time for nonexempt employees shall be calculated by dividing
12 the employee’s total wages, including overtime premium pay, by the employee’s total hours
13 worked in the full pay periods of the prior 90 days of employment.”

14 42. During the applicable statute of limitations period, Defendant fails to comply with
15 Labor Code Section §246 by not providing Plaintiff and the other aggrieved employees with sick
16 pay pursuant to the two (2) methods as set forth in Labor Code §246(l)(1) or (2). Additionally,
17 Plaintiff is informed and believes, during the applicable statute of limitations period, Defendant
18 violates California Labor Code § 246(l)(1) by failing to pay sick leave to the aggrieved employees
19 at their regular rate of pay taking into consideration non-discretionary bonus payments and other
20 methods to be discovered. Alternatively, Plaintiff is informed and believes, during the applicable
21 statute of limitations period, Defendant violates Labor Code § 246(l)(2) by failing to divide the
22 aggrieved employees total wages by their total hours worked in the “full pay periods of the prior
23 90 days of employment”.

24 **Failure to Pay COVID-19 Supplemental Sick Leave**

25 **[Cal. Lab. Code §§ 248.1, 248.2]**

26 43. Plaintiff is informed and believes, during the statute of limitations period,
27 Defendant failed to provide 80 hours of COVID-19 Supplemental Paid Sick leave and compensate
28 Aggrieved Employees at their regular rate of pay for supplemental sick leave, i.e., their highest

1 regular rate of pay, taking into consideration non-discretionary bonuses, etc., in violation of
2 California Labor Code § 248.1(b)(3)(A). Defendant also failed to provide COVID-19
3 Supplemental Sick Leave to Aggrieved Employees in violation of California Labor Code §
4 248.1(b)(2)(D). Defendant also failed to accurately reflect any offset and/or the current amount of
5 COVID-19 Supplemental Sick Leave available to Aggrieved Employees on their wage statements,
6 in violation of California Labor Code §§ 248.1(b)(2)(D), 248.2 and for the reasons provided
7 herein.

8 **Failure to Indemnify Employees for Necessary Expenditures**

9 **[Cal. Lab. Code § 2802; IWC Wage Order No. 8-2001, § 9**

10 **and all applicable IWC Wage Order]**

11 44. California Labor Code § 2802(a) requires an employer to indemnify an employee
12 for all necessary expenditures or losses incurred by the employee in direct consequence of the
13 discharge of his or her duties, or of his or her obedience to the directions of the employer.
14 Moreover, § 7 of IWC Wage Order 5-2001 or any other applicable Wage Order require employers
15 to provide and maintain uniforms for employees when such uniforms are mandatory.

16 45. During the Statute of Limitations Period, Defendant has failed to reimburse
17 Aggrieved Employees for the costs and maintenance of safety equipment and personal protective
18 equipment during the COVID-19 pandemic. Plaintiff and other aggrieved employees were forced
19 to purchase their own safety and personal protective equipment in order to work for Defendant
20 during the COVID-19 pandemic, as a condition of employment. Defendant did not reimburse
21 Plaintiff and other Aggrieved Employees for the costs of their PPE.

22 **Failure to Provide Suitable Resting Facilities**

23 **[IWC Wage Order 8-2001, §13 and all other applicable IWC Wage Orders]**

24 46. IWC Wage Order No. 8-2001, § 13 provides: "Suitable resting facilities shall be
25 provided in an area separate from the toilet rooms and shall be available to employees during work
26 hours."

27 47. During the Statute of Limitations Period, Defendant has failed to provide suitable
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1 resting facilities by not providing a break room, or any other appropriate designated area on the
2 work premises, where Plaintiff and other aggrieved employees could take meal periods and rest
3 breaks in violation of IWC Wage Order No. 8-2001, § 13 and all other applicable IWC Wage
4 Orders.

5
6 **Failure to Provide Suitable Seating**

7 **[IWC Wage Order No. 8-2001, § 14 and all other applicable IWC Wage Orders]**

8 48. IWC Wage Order No. 8-2001, § 14, and all other applicable IWC Wage Orders
9 provide:

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

12 (B) When employees are not engaged in the active duties of their employment
13 and the nature of the work requires standing, an adequate number of suitable seats
14 shall be placed in reasonable proximity to the work area and employees shall be
permitted to use such seats when it does not interfere with the performance of their
duties.”

15 49. Defendant has failed to provide suitable seating by not providing any seats or stools
16 at the cash registers operated by Plaintiff and other aggrieved employees. The nature of the work
17 reasonably permits the use of seats when cashiers assist customers by ringing up transactions. To
18 the extent that the use of seats could interfere with their work duties, at all times herein it is and
19 has been reasonable for Defendant to place seats in reasonable proximity to the cash registers to be
20 used by Plaintiff and other aggrieved employees when doing so would not interfere with their job
21 duties.

22 **Failure to Provide Notice of Employer-Related Information**

23 **[Cal. Lab. Code § 2810.5]**

24 50. California Labor Code § 2810.5 requires employers in California to provide written
25 notice at the time of hiring of certain employment-related information, as follows:

26 “(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week,
27 salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
28 (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging
allowances.

- 1 (C) The regular payday designated by the employer in accordance with the requirements of
2 this code.
3 (D) The name of the employer, including any “doing business as” names used by the
4 employer.
5 (E) The physical address of the employer’s main office or principal place of business, and
6 a mailing address, if different.
7 (F) The telephone number of the employer.
8 (G) The name, address, and telephone number of the employer’s workers’ compensation
9 insurance carrier.
10 (H) That an employee: may accrue and use sick leave; has a right to request and use
11 accrued paid sick leave; may not be terminated or retaliated against for using or requesting
12 the use of accrued paid sick leave; and has the right to file a complaint against an employer
13 who retaliates.
14 (I) Any other information the Labor Commissioner deems material and necessary.”

15 51. During the Statute of Limitations Period, Defendant has failed to comply with
16 California Labor Code § 2810.5 because they did not provide Plaintiff and other Aggrieved
17 Employees with notice of the requirements set forth above.

18 **FIRST CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 2698 *et seq.*]**

21 ***(On Behalf of Plaintiff and Aggrieved Employees against all Defendants)***

22 52. Plaintiff incorporates herein by specific reference, as though fully set forth, the
23 allegations in paragraphs 1 through 51.

24 53. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code
25 § 2699(c), and a proper representative to bring a civil action on behalf of herself and other
26 aggrieved employees pursuant to the procedures specified in California Labor Code § 2699.3,
27 because Plaintiff was employed by Defendant and one or more of the alleged California Labor
28 Code violations was committed against Plaintiff during the statute of limitations period.

54. A plaintiff has standing to represent all aggrieved employees for all of her asserted
violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services*
USA, Inc. (2018) 23 Cal.App.5th 745, 757 (“For PAGA standing a plaintiff need only have been
employed by the violator and affected by ‘one or more’ of the alleged violations. (Sec. 2699,
subds. (a), (c)).

1 55. Plaintiff seeks to recover civil penalties through a representative action permitted
2 by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969.
3 Thus, class certification is not required.

4 56. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
5 penalties from Defendant in a representative action for the violations set forth above, including but
6 not limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512,
7 1174(d), 1194, 1197, and 1198.

8 57. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil
9 penalties for Defendant's violations of California Labor Code provisions for which a civil penalty
10 is specifically provided, including but not limited to, the following:

- 11 a. Pursuant to California Labor Code § 210, for violations of California Labor
12 Code § 204, Defendant is subject to a civil penalty in the amount of one
13 hundred dollars (\$100) for the initial violation for each failure to pay each
14 employee, and two hundred dollars (\$200) per employee for violations in
15 subsequent pay periods.
- 16 b. Pursuant to California Labor Code § 226.3, for violations of California
17 Labor Code § 226(a), Defendant is subject to a civil penalty in the amount
18 of two hundred and fifty dollars (\$250) per aggrieved employee for the
19 initial pay period where a violation occurs and one thousand dollars
20 (\$1,000) per aggrieved employee for violations in subsequent pay periods.
- 21 c. Pursuant to California Labor Code § 1174.5, for violations of California
22 Labor Code § 1174(d), Defendant is subject to a civil penalty of five
23 hundred dollars (\$500).
24

25 58. California Labor Code § 2699(f) provides that for all California Labor Code
26 violations for which a civil penalty is not specifically provided, the following civil penalties are
27 established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
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1 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
2 subsequent violation.

3 59 Plaintiff seeks to recover penalties pursuant to California Labor Code § 2699 for
4 Defendant's violations of the California Labor Code provisions for which a civil penalty is not
5 specifically provided, including but not limited to, California Labor Code §§201, 202, 203, 226.7
6 and 1198. All penalties sought and recovered under this action will be allocated as follows: 75
7 percent to the state of California and 25 percent to aggrieved employees.

8 60. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to
9 California Labor Code § 2699(g)(1), California Code of Civil Procedure § 1021.5, and any other
10 applicable laws, rules, or doctrines.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees,
13 prays for relief against Defendant as follows:

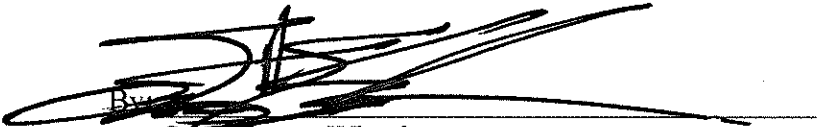
14 1. For civil penalties according to proof, including but not limited to, the amount of
15 any unpaid wages of Plaintiff and the other aggrieved employees and all penalties authorized by
16 California Labor Code §§210, 226.3, 1174.5, and 2699(a) and (f);

17 2. For reasonable attorneys' fees and costs pursuant to California Labor Code §
18 2699(g), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions
19 providing for attorneys' fees and costs; and

20 3. For such further relief that the Court may deem just and proper.

21
22 DATED: October 22, 2021

LAW OFFICE OF SCOTT ERNEST WHEELER

23
24 
25 Scott Ernest Wheeler

26 *Attorney for Plaintiff and the other Aggrieved*
27 *Employees*
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