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on behalf of himself and all other aggrieved employees

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

ISAIAS ZEPEDA, on behalf of himself and all
other aggrieved employees,

PLAINTIFF,

vs.

SUNSHINE RAISIN CORPORATION, a
California corporation d/b/a NATIONAL
RAISIN COMPANY; FULL STEAM
STAFFING, LLC, a New Jersey limited liability
company; and DOES 1 through 10, inclusive,

DEFENDANTS.

CASE NO. **CIV SB 2133568**

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

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 06 2021

BY Paola Iniguez
Paola Iniguez DEPUTY

1 Plaintiff ISAIAS ZEPEDA (“PLAINTIFF”), on behalf of himself and all other aggrieved
2 employees, alleges as follows:

3 **SUMMARY OF CASE**

4 1. PLAINTIFF brings this action on behalf of himself and all other aggrieved employees of
5 Defendants SUNSHINE RAISIN CORPORATION, a California corporation d/b/a NATIONAL
6 RAISIN COMPANY; FULL STEAM STAFFING LLC, a New Jersey limited liability company; and
7 DOES 1 through 10, inclusive (collectively, “DEFENDANTS”) to recover civil penalties arising from
8 Defendants’ unpaid wages earned and due to Plaintiff and the aggrieved employees, including but not
9 limited to unpaid minimum wages, failure to pay all wages due to discharged or quitting employees,
10 failure to maintain required records, failure to provide accurate itemized wage statements, and failure to
11 timely pay wages during employment.

12 **THE PARTIES**

13 2. PLAINTIFF is a resident of the State of California. At all times relevant to this action,
14 PLAINTIFF was employed by DEFENDANTS in the State of California as an hourly, non-exempt
15 employee.

16 3. PLAINTIFF is informed and believes, and based thereon alleges, that Defendant
17 SUNSHINE RAISIN CORPORATION (“SUNSHINE RAISIN”) is, and all times relevant to this action
18 was, a corporation organized and existing under the laws of the State of California. PLAINTIFF is
19 further informed and believes, and based thereon alleges, that Defendant SUNSHINE RAISIN is
20 authorized to transact and conduct business in the State of California and does transact and conduct
21 business in the County of Fresno, State of California. Further, SUNSHINE RAISIN maintains grounds,
22 facilities, and offices in the County of Fresno, State of California. SUNSHINE RAISIN employed
23 PLAINTIFF and other aggrieved persons within the State of California.

24 4. PLAINTIFF is informed and believes, and based thereon alleges, that Defendant
25 SUNSHINE RAISIN does business as NATIONAL RAISIN COMPANY in the County of Fresno, State
26 of California. SUNSHINE RAISIN d/b/a NATIONAL RAISIN COMPANY is, and at all relevant times
27 was, an employer whose employees were and are engaged to work in the State of California.

28 5. PLAINTIFF is informed and believes, and based thereon alleges, that SUNSHINE

1 RAISIN grows and processes raisins and other dried fruits. Upon information and belief, SUNSHINE
2 RAISIN hires employees either directly or through staffing agencies, including FULL STEAM
3 STAFFING, LLC (“FULL STEAM”).

4 6. PLAINTIFF is informed and believes, and based thereon alleges, that Defendant FULL
5 STEAM is, and all times relevant to this action was, a limited liability company organized and existing
6 under the laws of the State of New Jersey with its California operations headquartered in Ontario,
7 California in San Bernardino County. PLAINTIFF is further informed and believes, and based thereon
8 alleges, that FULL STEAM is authorized to transact and conduct business in the State of California and
9 does transact and conduct business in the State of California and in San Bernardino County. Indeed, its
10 website indicates that its home office is located at 2121 South Haven Avenue, Suite 100 in Ontario,
11 California 91761. PLAINTIFF is informed and believes, and based thereon alleges, that FULL STEAM
12 maintains grounds, facilities, and other offices in the State of California, including in San Bernardino
13 County. FULL STEAM is, and at all relevant times was, an employer whose employees were and are
14 engaged to work in the State of California.

15 7. PLAINTIFF is informed and believes, and based thereon alleges, that FULL STEAM is
16 a staffing company that places employees in positions of employment with its clients, including with
17 SUNSHINE RAISIN.

18 8. PLAINTIFF is informed and believes, and based thereon alleges, that at all relevant
19 times, FULL STEAM and SUNSHINE RAISIN operated as an integrated enterprise and as joint
20 employers of PLAINTIFF and other aggrieved employees. While FULL STEAM hired and paid
21 PLAINTIFF to work at SUNSHINE RAISIN, at all relevant times, SUNSHINE RAISIN exercised
22 control over his job duties and his employment in general. The doctrine of “dual employer” or “joint
23 employment” holds that, under these circumstances, both an employment agency and its clients are
24 considered employers. *Mathieu v. Norrell Corp.*, 115 Cal.App.4th 1174, 1183 (2004).

25 9. PLAINTIFF is informed and believes, and based thereon alleges, that at all relevant times
26 SUNSHINE RAISIN maintained control over key aspects of the employment of PLAINTIFF and other
27 aggrieved employees, including controlling their scheduled hours and working conditions, determining
28 when they receive breaks, setting their pay rates, and setting the rules and practices which govern their

1 employment. Further, both FULL STEAM and NATIONAL RAISIN are identified by name as
2 employers on the wage statements issued to PLAINTIFF during his employment.

3 10. PLAINTIFF is informed and believes, and based thereon alleges, that at all relevant times
4 DEFENDANTS were/are joint employers of PLAINTIFF and all other aggrieved employees within the
5 meaning of the California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage
6 Order(s), including IWC Orders 8-2001, 13-2001 and 14-2001 in that DEFENDANTS required,
7 suffered, and permitted PLAINTIFF and other aggrieved employees to work and assumed mutual
8 employer rights, responsibilities, and terms concerning the employment of PLAINTIFF and other
9 aggrieved employees. DEFENDANTS had mutual direct rights to control the wages, hours, and working
10 conditions of PLAINTIFF and other aggrieved employees, and had control over their hiring, retention,
11 supervision, discipline, termination, and day-to-day work performance and duties. DEFENDANTS
12 knew or should have known of the other’s wrongful conduct and the violations alleged herein, but each
13 failed to intervene and/or correct such conduct and violations.

14 11. Additionally, under California Labor Code Section 2810.3, DEFENDANTS share all
15 civil legal responsibility for failure to pay earned wages for all workers supplied to SUNSHINE RAISIN.
16 California Labor Code Section 2810.3 states, “[a] client employer shall share with a labor contractor all
17 civil legal responsibility and civil liability for all workers supplied by that labor contractor for...the
18 payment of wages.” The “labor contractor” (here, Defendant FULL STEAM) is defined as “an
19 individual or entity that supplies, either with or without a contract, a client employer with workers to
20 perform labor within the client employer’s usual course of business.” The “Client employer” (here,
21 Defendant SUNSHINE RAISIN is defined as “a business entity, regardless of its form, that obtains or
22 is provided workers to perform labor within its usual course of business from a labor contractor.” Upon
23 information and belief, SUNSHINE RAISIN is, and has been, a client employer within the definition of
24 Labor Code Section 2810.3, and shares with FULL STEAM, the labor contractor, all civil responsibility
25 and liability for the payment of all wages earned by PLAINTIFF and other aggrieved employees.

26 12. At this time, the true names and capacities of DOES 1 through 10, inclusive, are unknown
27 to PLAINTIFF, and PLAINTIFF therefore sues such DEFENDANTS under fictitious names.
28 PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated as a DOE is

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

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

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

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

26 16. PLAINTIFF is informed and believes, and based thereon alleges, that in accordance with
27 Labor Code Section 558.1, DEFENDANTS and any person acting on behalf of DEFENDANTS are
28 liable for violating, or causing to violate, any provision regulating minimum wages or hours and days

1 of work in any order of the Industrial Welfare Commission, or Labor Code Sections 1194, 203, 204,
2 210, 226, and/or 1193.6.

3 **JURISDICTION AND VENUE**

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

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

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

16 **PAGA ALLEGATIONS**

17 20. In accordance with Labor Code Section 2699.3, on or about September 30, 2021,
18 PLAINTIFF gave written notice to the California Labor and Workforce Development Agency
19 ("LWDA"), by filing a PAGA Notice online, a copy of which was sent by certified mail to
20 DEFENDANTS notifying them of the specific provisions of the Labor Code and applicable Industrial
21 Welfare Commission ("IWC") Wage Order(s) alleged to have been violated, including the facts and
22 theories to support the alleged violations. PLAINTIFF'S PAGA Notice was sent by certified mail to
23 DEFENDANTS on September 30, 2021.

24 21. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
25 violations within the sixty-five (65) calendar days of the postmark date of PLAINTIFF'S PAGA Notice.
26 Since PLAINTIFF has waited more than sixty-five (65) days from the postmark date of PLAINTIFF's
27 PAGA Notice before filing this Civil Action, PLAINTIFF has complied with all of the requirements
28 set forth in Labor Code Section 2699.3 to commence a representative action under the PAGA.

22. California Judicial Council Emergency rule 9 related to COVID-19 tolled the statute of limitations applicable to this action for five months and 25 days from April 6, 2020 to October 1, 2020. “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.” PAGA’s statute of limitations is governed by the Code of Civil Procedure Section 340 and thus is subject to modification by the California Judicial Council.

23. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code Sections 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current and former non-exempt aggrieved employees of DEFENDANTS in the State of California beginning from April 6, 2020 (as tolled by Emergency Rule 9) and ending at the time this action settles or proceeds to final judgment (the “PAGA PERIOD”).

PREDICATE LABOR CODE VIOLATIONS

Failure to Pay Minimum Wages

(Labor Code §§ 1194, 1197; IWC Wage Order Nos. 8-2001, 13-2001 and 14-2001, § 4)

24. Under Labor Code Sections 1194 and 1197 and applicable IWC Wage Orders, including but not limited to IWC Wage Order Nos. 8-2001, 13-2001 and 14-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

25. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PERIOD and in violation of Labor Code Sections 1194 and 1197 and the applicable IWC Wage Order(s), DEFENDANTS failed to pay PLAINTIFF and other aggrieved employees the applicable minimum wages for all hours worked in a payroll period by, among other things: requiring, suffering, or permitting PLAINTIFF and other aggrieved employees to wait in line pre-shift and off-the-clock for and during their COVID-19 temperature checks that, as noted, occurred before the start of their shifts, and before they “clocked in.”

26. Although Defendants maintained a common policy and practice of requiring PLAINTIFF and the aggrieved employees to stand/wait in line pre-shift for COVID-19 temperature checks during the PAGA PERIOD, DEFENDANTS failed to compensate PLAINTIFF and the other aggrieved employees for such time, despite the fact that it is compensable time under state law.

1 27. PLAINTIFF is informed and believes, and based thereon alleges, that beginning around
2 March 2020 and continuing to the present, PLAINTIFF and aggrieved employees formed a line in or
3 near DEFENDANTS' premises before shifts and were required to individually check their own
4 temperature with a thermometer scanning machine provided by DEFENDANTS.

5 28. Through their policy and practice of requiring PLAINTIFF and the aggrieved employees
6 to undergo pre-shift COVID-19 temperature checks, DEFENDANTS violated Labor Code Section
7 1194.

8 29. Under California law, employees must be paid for all "hours worked." Hours worked
9 include "the time during which an employee is subject to the control of an employer and includes all the
10 time the employee is suffered or permitted to work, whether or not required to do so." *See* IWC Wage
11 Order Nos. 1-2001 and 7-2001, 2(G); *see also Mendiola v. CPS Security Solutions, Inc.*, 60 Cal. 4th 833
12 (2015). "[I]t is only necessary that the worker be subject to the control of the employer in order to be
13 entitled to compensation." *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 584 (2000). An employee
14 is under the employer's control and entitled to compensation when the employer "'directs, commands
15 or restrains' an employee." *Id.* at 583 (citation omitted).

16 30. As the California Supreme Court made clear in *Morillion*, when determining whether an
17 employee's activity is under the employer's control entitling him or her to compensation, the import is
18 not whether the employer requires the activity and thus whether employees can avoid it, but the level of
19 control employers exert over employees during the activity: "The level of the employer's control, *rather*
20 *than the mere fact that the employer requires the employees' activity is determinative.*" *Morillion*, 22
21 Cal.4th at 587 (emphasis added).

22 31. In *Frlekin v. Apple Inc.*, the California Supreme Court reaffirmed its holding in *Morillion*
23 that "[t]he level of the employer's control over its employees, rather than the mere fact that the employer
24 requires the employees' activity, is determinative" concerning whether an activity is compensable under
25 the "hours worked" control clause. *Frlekin*, 8 Cal. 5th 1038, 1051 (2020) (citing *Morillion*, 22 Cal. 4th
26 at 587). In *Frlekin*, the California Supreme Court found that time employees spent undergoing bag
27 searches for security purposes at the end of their shifts was compensable. The Court reasoned its decision
28 by analyzing the factors that determine whether an employer has exerted compensable control:

1 We also emphasize that whether an activity is required remains probative in determining
2 whether an employee is subject to the employer's control. But, at least with regard to
3 cases involving *onsite* employer-controlled activities, the mandatory nature of an activity
4 is not the only factor to consider. We conclude that courts may and should consider
5 additional relevant factors—including, but not limited to, the location of the activity, the
6 degree of the employer's control, whether the activity primarily benefits the employee or
7 employer, and whether the activity is enforced through disciplinary measures—when
8 evaluating such employer-controlled conduct.

9 *Id.* at 1056. To be free of the employer's control for purposes of "hours worked," the employee must
10 be free to use his or her time "effectively for his or her own purposes." *Morillion*, 22 Cal.4th at 583.

11 32. Here, as in *Frlekin*, Plaintiff and the aggrieved employees could not avoid DEFENDANTS'
12 COVID-19 temperature checks and personal belongings security checks (which took place on Defendant
13 SUNSHINE RAISIN's premises and before they could clock in) and could not then use their time
14 effectively for their own purposes. As such, DEFENDANTS exercised compensable control over
15 Plaintiff and the aggrieved employees who underwent COVID-19 temperature checks and owe wages
16 to those employees and former employees at this time.

17 33. Notably, under state law, perhaps in contrast to federal law, there is no *de minimis* defense
18 allowing DEFENDANTS not to pay for such time. *See, Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018)
19 where the California Supreme Court held that the *de minimis* principle was not applicable in the context
20 of an alleged policy requiring employees to work minutes off the clock routinely; *see also, Frlekin*, 2020
21 Cal. LEXIS 547 (February 13, 2020) (hours work is defined as the time during which an employee is
22 subject to the control of an employer, and includes all the time the employee is suffered or permitted to
23 work, whether or not required to do so)..

24 34. Applying these legal principles, the California Department of Industrial Relations recently
25 issued guidance that supports Plaintiff's claim that DEFENDANTS unlawfully failed to pay him and
26 the aggrieved employees for their time spent on worksite temperature checks before clocking in for their
27 shifts. See Cal. Dept. of Industrial Relations, Safe Reopening FAQs for Workers and Employers (July
28 8, 2021), available at https://www.dir.ca.gov/covid19/FAQs_COVID-19_Safe_Reopening.htm, which
provides the following in regard to FAQ #10 (titled "Medical Checks, Testing, and Vaccinations"):

"10. Q: Must my employer pay me for time spent at my employer's worksite completing

certain medical checks (including temperature checks) before beginning a shift?

A: **Yes.** Employers must pay workers for all hours worked, including time that a worker is under the control of the employer. Employers that require their workers to complete a medical check in order to begin a shift, even if it is recommended under public health orders, must compensate workers for that time worked.

The term “hours worked” means the time during which a worker is subject to the control of an employer, and includes all the time the worker is suffered or permitted to work, whether or not required to do so. Under this definition, one way to determine whether time a worker spends performing a task is compensable—that is, whether it is time “worked”—is whether the employer exercised control over the worker by requiring the worker to perform that task.

If an employer requires that all workers perform a medical check (such as a temperature check) onsite before beginning a shift, the time completing the medical check, including any time waiting in line, would constitute time worked. This requirement applies even if such tasks were performed pursuant to a state or local public health guideline, because the check is done at the request and thus under the control of the employer.” (emphasis added).

35. Through their policy and practice of requiring Plaintiff and the aggrieved employees to undergo pre-shift COVID-19 temperature checks, DEFENDANTS violated Labor Code § 1194.

36. As a result of DEFENDANTS’ policy and practices described above, DEFENDANTS regularly failed to pay PLAINTIFF and all aggrieved employees for all hours worked in violation of Labor Code Sections 1194 and 1197.

Failure to Timely Pay Wages During Employment

(Labor Code § 204)

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

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

39. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PERIOD, DEFENDANTS knowingly and willfully failed to timely pay PLAINTIFF and other

1 aggrieved employees all the wages for labor performed by the next regular payroll period as required by
2 Labor Code Section 204.

3 **Failure to Pay All Wages Due Upon Separation of Employment**

4 **(Labor Code §§ 201, 202, 203)**

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

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

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

17 43. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
18 PERIOD and in violation of Labor Code Sections 201 and 202, DEFENDANTS willfully failed to timely
19 pay accrued wages and other compensation to PLAINTIFF and other aggrieved employees who were
20 discharged or who quit.

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

22 **(Labor Code § 226(a); IWC Wage Order Nos. 8-2001, 13-2001 and 14-2001, § 7)**

23 44. During the PAGA PERIOD, DEFENDANTS failed and continue to fail to provide
24 PLAINTIFF and other aggrieved employees with timely and accurate itemized wage statements in
25 writing showing each employee's accurate total of gross wages earned, accurate total of total hours
26 worked, and the accurate total of net wages earned, in effect during each pay period and the
27 corresponding number of hours worked at each hourly rate, in violation of Labor Code Section 226,
28 subdivision (a) and applicable IWC Wage Order(s), including but not limited to IWC Wage Order Nos.

1 8-2001, 13-2001 and 14-2001, § 7.

2 45. As alleged above, PLAINTIFF is informed and believes, and based thereon alleges, that
3 during the PAGA PERIOD, DEFENDANTS knowingly and intentionally failed to pay PLAINTIFF and
4 all aggrieved employees all minimum wages associated with time spent by them on off-the-clock and
5 pre-shift COVID-19 temperature checks. Accordingly, all wage statements contained inaccurate
6 information as to hours worked and wages earned (since time spent on pre-shift COVID temperature
7 checks were never included).

8 46. As a result of DEFENDANTS' unlawful policies and practices and failure to pay all
9 earned wages, including minimum wages, DEFENDANTS knowingly and intentionally failed to
10 provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage statements
11 in accordance with Labor Code Section 226, subdivision (a).

12 47. During the PAGA PERIOD, PLAINTIFF and other aggrieved employees suffered
13 injury as a result of DEFENDANTS' failure to provide timely and accurate itemized wage statements
14 as PLAINTIFF and other aggrieved employees could not timely and easily determine from the wage
15 statements the actual and accurate total hours worked by the employees, the gross wages earned, the
16 net wages earned, since time spent on COVID-19 temperature checks, and waiting in line was always
17 done off the clock and pre-shift.

18 **FIRST CAUSE OF ACTION**

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

20 **(Labor Code §§ 2698 *et seq.*)**

21 **(AGAINST ALL DEFENDANTS)**

22 48. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of
23 the allegations in paragraphs 1 through 47, above.

24 49. PLAINTIFF is an "aggrieved employee" within the meaning of Labor Code Section
25 2699, subdivision (c), and a proper representative to bring a civil action on behalf of himself and other
26 current and former non-exempt employees and joint employees of DEFENDANTS under the procedures
27 specified in Labor Code Section 2699.3, because PLAINTIFF was jointly employed by DEFENDANTS
28 and one or more of the alleged Labor Code violations was committed against PLAINTIFF during the

1 PAGA PERIOD.

2 50. PLAINTIFF seeks to recover civil penalties through a representative action permitted by
3 PAGA.

4 51. Pursuant to Labor Code Sections 2698 through 2699.5, PLAINTIFF seeks to recover
5 civil penalties from DEFENDANTS in a representative action for the violations set forth above which
6 include, but are not limited to, violations of Labor Code Sections 201, 202, 203, 204, 210, 226,
7 subdivision (a), 1194, 1194.2, 1197, 1197.1, and 1198.

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

11 a. Under Labor Code Section 210, pursuant to which DEFENDANTS are subject to a civil
12 penalty in the amount of one hundred dollars (\$100.00) for the initial violation and two hundred dollars
13 (\$200.00) per employee for violations in subsequent pay periods for violations of Labor Code Section
14 204;

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

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

26 53. PLAINTIFF seeks civil penalties based on DEFENDANTS' violations of Labor Code
27 provisions for which a civil penalty is not specifically provided. Labor Code Section 2699, subdivision
28 (f) provides that for all Labor Code violations for which a civil penalty is not specifically provided, the

1 following civil penalties apply: one hundred dollars (\$100.00) for each aggrieved employee per pay
2 period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
3 period for each subsequent violation.

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

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

10 **PRAYER FOR RELIEF**

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

13 1. For civil penalties according to proof and all penalties authorized under the PAGA
14 including under Labor Code Sections 210, 226.3, 1197.1, and 2699, subdivisions (a) and (f);

15 2. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor
16 Code Section 2699, subdivision (g) and any other applicable provisions providing for attorneys' fees
17 and costs; and

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

20
21 DATED: December 6, 2021

Respectfully submitted,

22 **ACKERMANN & TILAJEF, P.C.**
23 **PROXY LAW FIRM LLP**

24
25 By: 
26 Craig J. Ackermann
27 Co-Counsel for Plaintiff ISAIAS ZEPEDA, on
28 behalf of himself and all other aggrieved
employees