

1 GRAHAMHOLLIS APC
Graham S.P. Hollis (SBN 120577)
2 ghollis@grahamhollis.com
Vilmarie Cordero (SBN 268860)
3 vcordero@grahamhollis.com
Hali M. Anderson (SBN 261816)
4 handerson@grahamhollis.com
Monique R. Rodriguez (SBN 304223)
5 mrodriguez@grahamhollis.com
3555 Fifth Avenue, Suite 200
6 San Diego, California 92103
Telephone: 619.692.0800
7 Facsimile: 619.692.0822

8 *Attorneys for Plaintiff Jesús Muñiz*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF KERN**

11 JESÚS MUÑIZ, as an individual and on behalf
of all persons similarly situated,

12 Plaintiff,

13 v.

14 NORMAN ETCHISON, INC., a California
15 Corporation; and DOES 1 through 50, inclusive.

16 Defendants.
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Case No.: BCV-22-101571

CLASS ACTION

**COMPLAINT FOR DAMAGES,
RESTITUTION, PENALTIES, AND
INJUNCTIVE RELIEF:**

- (1) **FAILURE TO TIMELY PAY MINIMUM,
REGULAR, AND/OR OVERTIME
WAGES (Labor Code §§ 204, 210, 510, 558,
1194, 1194.2, 1197, 1197.1, 1198, and IWC
Wage Order 14-2001);**
- (2) **FAILURE TO PROVIDE LEGALLY
COMPLIANT MEAL PERIODS AND/OR
TIMELY PAY PREMIUM WAGES FOR
NON-COMPLIANT MEAL PERIODS
(Labor Code §§ 204, 226.7, 512, 558, 1198,
and IWC Wage Order 14-2001);**
- (3) **FAILURE TO PROVIDE LEGALLY
COMPLIANT REST PERIODS AND/OR
TIMELY PAY PREMIUM WAGES FOR
NON-COMPLIANT REST PERIODS
(Labor Code §§ 204, 226.7, 1198, and IWC
Wage Order 14-2001);**
- (4) **FAILURE TO TIMELY PAY ALL
EARNED WAGES DURING
EMPLOYMENT (Labor Code §§ 204 and
210);**

- (5) **FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION OF EMPLOYMENT AND/OR PAY THE REQUIRED WAITING TIME PENALTIES** (Labor Code §§ 201- 203);
- (6) **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS** (Labor Code §§ 226, 226.3, 1198, and IWC Wage Order 14-2001);
- (7) **FAILURE TO MAINTAIN ACCURATE RECORDS** (Labor §§ 226, 1174, 1174.5, 1198, and IWC Wage Order 14-2001); and
- (8) **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW** (Bus. & Prof. Code §§ 17200, *et seq.*)

PAGA ENFORCEMENT ACTION

COMPLAINT FOR CIVIL PENALTIES:

- (1) **PRIVATE ATTORNEYS GENERAL ACT** (Labor Code §§ 2698, *et seq.*)

DEMAND FOR JURY TRIAL

Plaintiff Jesús Muñiz (“Plaintiff”) brings this class and Private Attorneys General Act (“PAGA”) enforcement action on behalf of himself, and all persons similarly situated, against Defendant Norman Etchison, Inc. and DOES 1 through 50, inclusive (collectively, “Norman Etchison” or “Defendants”), on the following grounds:

INTRODUCTION

1. This class and PAGA enforcement action is brought by Plaintiff on behalf of himself and all other current and former non-exempt employees of Defendants who performed work in the state of California during the relevant time period (referred to herein as “Norman Etchison Employees”).

2. Plaintiff asserts that during the relevant time period, Defendants engaged in a common pattern and practice of wage and hour violations under the California Labor Code (“Labor Code”) and the California Industrial Welfare Commission’s (“IWC”) Wage Order No. 14-2001 to decrease their employment-related costs and increase their profits by, among other things:

- a. Failing to timely compensate for all hours actually worked, including minimum, regular, and/or overtime wages;
- b. Failing to provide the opportunity to take legally compliant meal periods and/or timely pay premium wages in lieu thereof;
- c. Failing to authorize and permit legally compliant rest periods and/or timely pay premium wages in lieu thereof;
- d. Failing to timely pay all earned wages during employment;
- e. Failing to timely pay all wages due and owing upon separation of employment and/or the mandatory waiting time penalties;
- f. Failing to furnish accurate itemized wage statements;
- g. Failing to maintain accurate records; and
- h. Engaging in unlawful, unfair and/or fraudulent business practices.

3. By and through this action, Plaintiff seeks to recover all available remedies, including, but not limited to, damages, restitution, statutory penalties, civil penalties, and injunctive relief, as well as reasonable attorneys' fees and litigation costs, as provided under California law.

4. All allegations in this Complaint are based upon information and belief except those allegations that pertain to Plaintiff named herein and his counsel, which are based upon personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure ("Code of Civil Procedure") section 410.10. Pursuant to Code of Civil Procedure section 382 and California Business and Professions Code ("Business & Professions Code") section 17203, and Labor Code section 2699(a), Plaintiff brings this action on behalf of himself and all other NormanEtchison Employees.

6. This Court has personal jurisdiction over Defendants because Defendants conduct business in the state of California and have caused injuries in the County of Kern, as well as throughout the state of California, through their acts, omissions, and violations of the Labor Code and Business & Professions

Code.

7. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil Procedure section 395(a). Defendants transact business in Kern County and are otherwise within the Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and all other Norman Etchison Employees within the county of Kern and throughout the state of California.

8. Pursuant to rule 3.400 of the California Rules of Court, this case shall be deemed a complex action because it is filed as a class action that involves specialized case management, extensive discovery and evidence, difficult and/or novel issues, and is likely to require extensive post-judgement supervision.

THE PARTIES

I. PLAINTIFF

9. Plaintiff Jesús Muñiz at all material times mentioned herein:

- a. Was and is a resident of the county of Kern, California;
- b. Was employed by Norman Etchison from approximately August 3, 2021 to October 2021 and performed work as an agricultural worker at an almond farm located in Bakersfield, California;
- c. Was classified by Norman Etchison as a non-exempt employee for purposes of the Labor Code and IWC Wage Orders;
- d. Earned an hourly wage;
- e. Was to be paid on a weekly basis;
- f. Typically worked ten (10) to twelve (12) hour shifts, six (6) days a week, for a total of approximately sixty (60) hours per week;
- g. Was not timely compensated the appropriate minimum, regular, and/or overtime wages for all time engaged in work;
- h. Was not provided with the opportunity to take legally compliant meal periods and/or timely paid premium wages in lieu thereof;
- i. Was not authorized and permitted to take legally compliant rest periods and/or timely pay premium wages in lieu thereof;

- j. Was not timely paid all earned wages during employment;
- k. Was not timely paid all wages due and payable upon separation of employment and/or the required waiting time penalties for the late payment of wages;
- l. Was not furnished with accurate itemized wage statements;
- m. Contends his employment records were not accurately maintained;
- n. Was subject to Defendants' unlawful, unfair, and fraudulent business practices;
- o. Is a member of the class and sub-class defined herein;
- p. Is an "aggrieved employee" as defined by Labor Code section 2699(c); and
- q. Has complied with all requirements outlined in Labor Code sections 2698, *et seq.*

II. DEFENDANTS

10. Defendant Norman Etchison, Inc. is a California corporation that has its principal place of business in Bakersfield, California. Norman Etchison, Inc. is in the agricultural business and is believed to own, operate, and/or manage at least one farm in California. Norman Etchison, Inc. is believed to employ twenty-five (25) or more employees, particularly during peak season, which is July through October.

11. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of DOES 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

12. At all times mentioned herein, the acts alleged to have been done and/or caused by each named defendant are also alleged to have been done and/or caused by each fictitiously named defendant, and by each of their agents and/or employees who acted within the scope of their agency and/or employment.

13. At all times mentioned herein, each named defendant, including each fictitiously named defendant, is believed to have acted individually or as an officer, agent, or employee of each of the other defendants.

14. At all times mentioned herein, each named defendant, including each fictitiously named defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of each of the other defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture.

15. At all times mentioned herein, the acts and/or omissions of each of the named defendants, including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions of each and every one of the other defendants, including each fictitiously named defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of the named defendants, including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions complained herein. Each named defendant, including each fictitiously named defendant, was and is acting with authority of each and every other defendant and/or is acting as an agent of each and every other named defendant or DOE defendant.

16. At all times mentioned herein, there was a unity of interest and ownership between each named defendant, including each fictitiously named defendant, such that all defendants acted as a single employer of Plaintiff and all other NormanEtchison Employees.

17. At all times mentioned herein, each named defendant, including each fictitiously named defendant, exercised supervision and control over the working conditions of Plaintiff and all other NormanEtchison Employees, including implementing standard policies and procedures.

FACTUAL ALLEGATIONS

18. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

19. Plaintiff was employed by, or otherwise performed work for, Norman Etchison from approximately August 3, 2021 through and including October 2021 at an almond farm in Bakersfield, California. During his employment, Plaintiff performed work for Norman Etchison as a seasonal agricultural worker where he was responsible for harvesting almonds. Plaintiff was classified by Norman Etchison as a non-exempt employee, earned an hourly wage, and was to be paid on a weekly basis. Plaintiff typically worked ten (10) to twelve (12) hour shifts, six (6) days a week, for a total of approximately sixty (60) hours per week.

20. Plaintiff asserts that Norman Etchison has employed, and will continue to employ, other NormanEtchison Employees in Kern County.

21. Plaintiff also asserts that Norman Etchison employs twenty-five (25) or more employees, particularly during peak season, which is believed to be July through October.

22. Plaintiff further alleges that, throughout the relevant time period, all NormanEtchison Employees earned an hourly wage and were to be paid on a weekly basis.

23. Plaintiff contends that he and all other NormanEtchison Employees were subject to, and those currently employed continue to be subject to, the same and/or similar policies, practices, procedures guidelines and/or culture described herein.

24. Plaintiff further alleges that he and all other NormanEtchison Employees have suffered, and those currently employed will continue to suffer, the same and/or similar violations of law described herein.

25. Plaintiff asserts that Norman Etchison had, and continues to have, a policy, practice, procedure, guideline and/or culture of not compensating him and other NormanEtchison Employees all minimum, regular, and/or overtime wages for all time engaged in work or spent under the control of Norman Etchison.

26. Plaintiff alleges Norman Etchison did not require NormanEtchison Employees to clock in, clock out, or keep a timecard. Instead, Norman Etchison rounded hours worked by Plaintiff and, on information and belief, other NormanEtchison Employees based upon their work schedule. The practice of rounding hours caused NormanEtchison Employees to not be paid the hours actually worked on any given day.

27. Plaintiff also contends that Norman Etchison did not properly pay NormanEtchison Employees overtime wages no later than the next regular pay day because Norman Etchison did not pay NormanEtchison Employees overtime wages for work performed in excess of eight and one half (8 ½) hours per workday or forty-five (45) hours per week during the time period it regularly employed twenty-five (25) or more employees.

28. Plaintiff further asserts that Norman Etchison had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not providing NormanEtchison Employees the opportunity to take

1 legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods.

2 29. Plaintiff alleges Norman Etchison did not provide NormanEtchison Employees a second
3 off-duty, uninterrupted thirty (30) minute meal period after their tenth (10th) hour of work. Plaintiff and,
4 based on information and belief, other NormanEtchison Employees did not agree to waive their second
5 meal period. In fact, Norman Etchison did not inform NormanEtchison Employees of their entitlement to
6 a second meal period on days they worked in excess of ten (10) hours.

7 30. Despite working more than ten (10) hours in a day and not being provided a second meal
8 break, Norman Etchison did not timely pay NormanEtchison Employees premium wages at one additional
9 hour of pay at the employee's regular rate of compensation for each workday a legally compliant meal
10 period was not provided.

11 31. Plaintiff further asserts Norman Etchison had, and continues to have, a policy, practice,
12 procedure, guideline, and/or culture of not permitting NormanEtchison Employees to take legally
13 compliant rest periods and/or timely paid premium wages for non-compliant rest periods.

14 32. Plaintiff alleges Norman Etchison did not permit NormanEtchison Employees to take a
15 third duty-free ten (10) minute rest period on days when they worked more than ten (10) hours. In fact,
16 Norman Etchison failed to inform NormanEtchison Employees of their entitlement to a third rest period
17 when they worked more than ten (10) hours. Despite working more than ten (10) hours in a day and not
18 being provided a third rest break, Norman Etchison did not timely pay NormanEtchison Employees
19 premium wages at one additional hour of pay at the employee's regular rate of pay for each workday a
20 lawful rest period was not provided.

21 33. Plaintiff contends that Norman Etchison had, and continues to have, a policy, practice,
22 procedure, guideline and/or culture of not timely paying all wages during employment.

23 34. Plaintiff alleges that Norman Etchison did not pay all minimum, regular and/or premium
24 wages to NormanEtchison Employees at least twice during each calendar month on the days designated
25 in advance by Norman Etchison as regular pay days during employment. Plaintiff further asserts that
26 Norman Etchison did not pay overtime wages to NormanEtchison Employees no later than the payday for
27 the next regular payroll period during employment.

28 35. Plaintiff further asserts Norman Etchison had, and continues to have, a policy, practice,

1 procedure, guideline, and/or culture of not timely paying all wages due and owing to NormanEtchison
2 Employees upon separation of employment.

3 36. Plaintiff alleges Norman Etchison did not immediately pay all his wages owed despite
4 being terminated. Additionally, to date Plaintiff has not received all wages due and owing including, but
5 not limited to, all regular, overtime, and premium wages or the required waiting time penalties for the late
6 payment of his wages. Plaintiff contends, based on information and belief, that other NormanEtchison
7 Employees were not timely paid all of their wages due and owing upon separation of employment,
8 including all regular, overtime, and premium wages, due in part to the violations asserted herein, and/or
9 the required waiting penalties.

10 37. Plaintiff further asserts Norman Etchison had, and continues to have, a policy, practice,
11 procedure, guideline, and/or culture of not furnishing NormanEtchison Employees with accurate, itemized
12 wage statements that comply with California law.

13 38. Plaintiff alleges that Norman Etchison failed to furnish NormanEtchison Employees with
14 itemized wage statements that included the actual total regular and overtime hours worked, the applicable
15 hourly rates and corresponding number of hours actually worked at each hourly rate, and the correct
16 amount of gross and net wages earned. Additionally, wage statements did not include the full address of
17 Norman Etchison.

18 39. Due to the lack of information on the wage statements furnished by Norman Etchison,
19 NormanEtchison Employees, such as Plaintiff, were unable to promptly and easily determine, for example,
20 their total number of hours actually worked, the applicable hourly rates in effect during the pay period,
21 the corresponding number of hours worked at each hourly rate, and the address of their employer.

22 40. Plaintiff further asserts Norman Etchison had, and continues to have, a policy, practice,
23 procedure, guideline, and/or culture of not maintaining accurate employment records as required by
24 California law.

25 41. Plaintiff alleges Norman Etchison did not institute any clock in, clock out, or timecard
26 procedure, so Norman Etchison knowingly and intentionally failed to maintain accurate records reflecting,
27 for example, the total daily hours actually worked by NormanEtchison Employees, when NormanEtchison
28 Employees began or ended each work period and took meal periods, and all wages earned and paid.

42. On January 31, 2022, Plaintiff submitted written notice to the California Labor and Workforce Development Agency (“LWDA”) and Norman Etchison as required by the Private Attorneys General Act of 2004 (“PAGA”) informing them of Norman Etchison’s alleged violations of the Labor Code. A true and correct copy of the January 31, 2022 written notice is attached hereto as **Exhibit 1** and incorporated herein by reference.

43. To date, more than 65 days after submission of Plaintiff’s written notice, the LWDA has not provided notice of its intent to investigate Plaintiff’s alleged violations of the Labor Code.

44. Plaintiff believes that additional violations may be discovered and therefore reserves his right to allege additional violations of the law as investigation and discovery warrants. In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as necessary.

CLASS ACTION ALLEGATIONS

45. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint

46. Plaintiff seeks to represent the following class and sub-class, of Norman Etchison Employees:

The Non-Exempt Class

All current or former non-exempt employees of Defendants who performed work in California during the period commencing on the date that is within four years prior to the filing of this Complaint through and including the last date of trial (hereinafter the “Class Period”). To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the Non-Exempt Class against Defendants, the time period should be adjusted accordingly.

The Waiting Time Sub-Class

All current or former non-exempt employees of Defendants who performed work in California during the period commencing on the date that is within three years prior to the filing of this Complaint through and including the last date of trial. To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the Waiting Time Sub-Class against Defendants, the time period should be adjusted accordingly.

47. Members of the class and/or sub-class are all “employees” as the term is used in the Labor Code and IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

1 48. A more precise definition of the class and/or sub-class may be determined after further
2 investigation and discovery. Plaintiff reserves his right to redefine the class, sub-class, and/or create
3 additional classes or sub-classes at any time prior to the court's order on Plaintiff's class certification
4 motion as provided by law. (Cal. Rules Ct., R. 3.765(b).)

5 49. This class action meets the statutory prerequisites for the maintenance of a class action, as
6 set forth in the Code of Civil Procedure section 382 and California Civil Code ("Civil Code") section
7 1781, in that:

- 8 a. The persons who comprise the class and/or sub-class are so numerous that the
9 joinder of all such persons is impracticable and the disposition of their claims as a
10 class will benefit the parties and the Court;
- 11 b. Nearly all factual, legal, statutory, declaratory, and injunctive relief issues that are
12 raised in this Complaint as common to the class and/or sub-class and will apply
13 uniformly to every member of the class and/or sub-class, and as a practical matter,
14 be dispositive of the interests of the other member not party to the adjudication;
- 15 c. The parties opposing the class and/or subclass have acted or have refused to act on
16 grounds generally applicable to the class and/or sub-class, thereby making final
17 injunctive relief or declaratory relief appropriate with respect to the class and/or
18 sub-class as a whole; and
- 19 d. Common questions of law and fact exist as to the member of the class and/or sub-
20 class and predominate over any question affecting only individual members, and a
21 class action is superior to other available methods for the fair and efficient
22 adjudication of the controversy, including consideration of:
- 23 i. The interests of class members and/or sub-class members in individually
24 controlling the prosecution or defense of separate actions;
- 25 ii. The extent and nature of any litigation concerning the controversy already
26 commenced by or against members of the class and/or sub-class;
- 27 iii. The desirability or undesirability of concentrating the litigation of the
28 claims in this particular forum; and

iv. The likely difficulties in managing a class action.

50. The Court should permit this action to be maintained as a class action pursuant to the Code of Civil Procedure 382 and Civil Code section 1781 because:

- a. Questions of law and fact common to the class and/or sub-class are substantially similar and predominate over any questions affecting only individual members;
- b. A class action is superior to any other available method for the fair and efficient adjudication of class members' and/or sub-class members' claims;
- c. The members of the class and/or sub-class are so numerous that it is impractical to bring all class members before the Court;
- d. Plaintiff's claims are typical of the claims of the class and/or sub-class;
- e. Class members and/or sub-class members will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- f. There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged, and in obtaining adequate compensation for the damages that Defendants' actions have inflicted upon the class and/or sub-class;
- g. Plaintiff can fairly and adequately protect the interests of the class and/or sub-class;
- h. There is a community of interest in ensuring that the combined assets and available insurance of Defendants are sufficient to adequately compensate the members of the class and/or sub-class for the injuries sustained; and
- i. Defendants have acted or refused to act on ground generally applicable to the class and/or sub-class, thereby making final injunctive relief appropriate with respect to the class and/or sub-class as a whole.

PAGA ACTION ALLEGATIONS

51. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

52. By and through this PAGA enforcement action, Plaintiff intends to represent the following aggrieved employees:

Non-Exempt Group

All current or former non-exempt employees of Defendants who performed work in California during the period commencing on the date that is within one year and sixty-five days prior to the filing of this Complaint through and including the last date of trial (hereinafter the “PAGA Period”). To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the Non-Exempt Group against Defendants, the time period should be adjusted accordingly.

53. Members of the Non-Exempt Group are all “employees” as the term is used in the Labor Code and the IWC Wage Orders regulating, wages, hours, and working conditions in the state of California.

54. A more precise definition of the aggrieved employees may be determined after further investigation and discovery. Plaintiff reserves his right to redefine the group of aggrieved employees as permitted by California law.

55. Pursuant to Labor Code sections 2698, *et seq.*, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

56. Pursuant to the PAGA all civil penalties recovered must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant to labor Code section 2699(i).

57. During all, or a portion of, the one year and sixty five day period before Plaintiff submitted his written notice to the LWDA, Norman Etchison was Plaintiff’s and all other NormanEtchison Employees’ employer or a person acting on behalf of NormanEtchison Employees’ employer, either individually or as an officer, agent, or employee of another person, within the meaning of Labor Code sections 558(a) and 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, is subject to civil penalties for each underpaid employee, as well as liquated damages pursuant to Labor Code sections 1194.2, and any applicable penalties imposed pursuant to Labor Code section 203.

58. Plaintiff is an “aggrieved employee” under the PAGA because he was employed by the

1 alleged violator, Northam Etchison, and experienced one or more of the alleged violations committed
2 against NormanEtchison Employees, and therefore is properly suited to represent the interest of other
3 NormanEtchison Employees.

4 59. Plaintiff alleges that all other NormanEtchison Employees are also “aggrieved employees”
5 under the PAGA because Norman Etchison employed them, and all NormanEtchison Employees have
6 experienced one or more of the alleged violations of law outlined herein.

7 60. Plaintiff has exhausted his administrative remedies because he has complied with the notice
8 requirement outlined in Labor Code section 2699.3. On January 31, 2022, Plaintiff submitted written
9 notice to the LWDA and Norman Etchison informing them of Norman Etchison’s alleged Labor Code
10 violations. The LWDA had sixty-five (65) days to provide notice of its intent to investigate the alleged
11 violations. The LWDA did not provide notice of its intent to investigate the alleged violations within the
12 time proscribed by the PAGA. Therefore, Plaintiff has the right to pursue, and does so pursue, the asserted
13 claims under the PAGA in his representative capacity pursuant to Labor Code sections 2698, *et seq.*

14 61. As set forth herein, Norman Etchison has committed, and continues to commit, numerous
15 violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in his
16 representative capacity, to recover, on behalf of himself and all other NormanEtchison Employees, the
17 state of California, and the general public, civil penalties as well as attorneys’ fees and costs from Norman
18 Etchison for the alleged violations described herein.

19 62. Labor Code section 2699(f) imposes a civil penalty of \$100 per pay period, per employee
20 for the initial violation, and \$200 per pay period, per employee for each subsequent violations for all Labor
21 Code provisions for which a civil penalty is not specifically provided including, but not limited to, Labor
22 Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, and 1198.
23 Plaintiff and all other NormanEtchison Employees are entitled to, and therefore seek, the civil penalties
24 described in Labor Code section 2699(f) for the violations of law described herein.

25 63. Labor Code section 2699(g)(1) provides that an employee who prevails in a civil action
26 brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys’ fees and costs.
27 Therefore, Plaintiff, in his representative capacity on behalf of himself and all other NormanEtchison
28 Employees, is entitled to and therefore seeks attorneys’ fees and costs.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Non-Exempt Class Against Defendants and Does 1-50)

FAILURE TO TIMELY PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES

**[Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the “Minimum Wages”
and “Hours and Days of Work” §§ of IWC Wage Order No. 14]**

64. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

65. Labor Code section 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Labor Code section 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. (Labor Code § 204(a).) Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

66. Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”].)

67. The “Minimum Wages” section of the IWC Wage Order No 14-2001 also states that “[e]very employer shall pay to each employee, on the stablished payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” Furthermore, the “Minimum Wages” section requires that such employees be paid a minimum wage of not less than fourteen dollars (\$14.00) per hour for the year 2021. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

68. Labor Code section 1198 states,

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for

longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

69. Labor Code section 510(a) codifies an employee's right to overtime compensation, stating:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day or a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

70. The "Hours and Days of Work" section of IWC Wage Order No. 14-2001 mandates that as of January 1, 2021, employees shall not be employed more than eight and one-half (8.5) hours in any one workday or more than forty-five (45) hours in any workweek unless the employee receives one and one-half (1.5) times such employee's regular rate of pay for all excess hours worked when the employer employs twenty-five (25) or more employees during the relevant time period.

71. Labor Code Section 1194(a) states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

72. Labor Code section 1197.1 states:

Any employer or other person acting either individually or as an office, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

73. For actions brought under Labor Code section 1194 or 1197.1, Labor Code section 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

74. Labor Code section 210 provides that, "every person who fails to pay the wages of an

1 employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial
2 violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

3 75. Labor Code section 558 provides that “any employer or other person acting on behalf of
4 an employer who violates, or causes to be violated, a section of this chapter or any provision regulating
5 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
6 penalty” of \$50 for each underpaid employee for each pay period for which the employee was underpaid
7 in addition to an amount sufficient to recover unpaid wages for any initial violation, and \$100 for each
8 underpaid employee for each pay period for which the employee was underpaid for each subsequent
9 violation in addition to an amount sufficient to recover unpaid wages.

10 76. Plaintiff alleges that he and other NormanEtchison Employees regularly worked at least
11 eight (8) hours per day and/or forty (40) hours per week during the relevant time period, earned an hourly
12 wage, and were to be paid on a weekly basis.

13 77. Plaintiff asserts that Norman Etchison had, and continues to have, a policy, practice,
14 procedure, guideline and/or culture of not compensating him and other NormanEtchison Employees all
15 minimum, regular, and/or overtime wages for all time engaged in work and/or spent under the control of
16 Norman Etchison.

17 78. Plaintiff alleges that Norman Etchison has a policy, practice, procedure of not requiring
18 NormanEtchison Employees to clock in, clock out, or keep a timecard. Instead, Norman Etchison rounded
19 hours worked by Plaintiff and, on information and belief, other NormanEtchison Employees based upon
20 their work schedule. The practice of rounding hours caused NormanEtchison Employees to not be paid
21 the hours actually worked on any given day.

22 79. Plaintiff contends that Norman Etchison did not properly pay NormanEtchison Employees
23 overtime wages no later than the next regular pay day because Norman Etchison did not pay
24 NormanEtchison Employees overtime wages for work performed in excess of eight and one half (8 ½)
25 hours per workday or forty-five (45) hours per week during the time period it regularly employed twenty-
26 five (25) or more employees.

27 80. By virtue of Norman Etchison’s unlawful failure to compensate Plaintiff and all other
28 NormanEtchison Employees minimum, regular, and/or overtime wages for all of their time actually

1 worked, NormanEtchison Employees have suffered, and will continue to suffer, damages in an amount
2 which is presently unknown, and which will be ascertained according to proof at trial.

3 81. Having not received all regular, minimum, and overtime wages due, Plaintiff and all other
4 NormanEtchison Employees are entitled to, and now seek to, recover, all wages and penalties owed
5 including, but not limited to, penalties and liquidated damages available under Labor Code sections 210,
6 558, 1194.2, 1197.1, 1199, as well as interest and reasonable attorneys' fees and costs pursuant to Labor
7 Code sections 218.5, 1194, and Code of Civil Procedure section 1021.5.

8 82. Plaintiff, on behalf of himself and all other NormanEtchison Employees, requests further
9 relief as described in the below prayer.

10 **SECOND CAUSE OF ACTION**

11 **(By Plaintiff Individually and Behalf of the Non-Exempt Class against Defendants and Does 1-50)**

12 **FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS**

13 **AND/OR PAY TIMELY COMPENSATION IN LIEU THEREOF**

14 **[Labor Code §§ 204, 210, 226.7, 512, 558, 1198, and the**

15 **"Meal Periods" § of IWC Wage Order No. 14]**

16 83. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
17 paragraphs of this Complaint.

18 84. Labor Code section 1198 states,

19 [t]he maximum hours of work and the standard conditions of labor fixed by
20 the commission shall be the maximum hours of work and the standard
21 conditions of labor for employees. The employment of any employee for
22 longer hours than those fixed by the order or under conditions of labor
23 prohibited by the order is unlawful.

24 85. In pertinent part, Labor Code section 512(a) states:

25 An employer may not employ an employee for a work period of more than
26 10 hours per day without providing the employee with a second meal period
27 of not less than 30 minutes, except that if the total hours worked is no more
28 than 12 hours, the second meal period may be waived by mutual consent of
the employer and the employee only if the first meal period was not waived.

86. Labor Code section 226.7(c) states:

If an employer fails to provide an employee a meal or rest or recovery period

in accordance with a state law ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

87. The "Meal Periods" section of IWC Wage Order No. 14-2001 states that an employer may not employ an employee for more than 10 or more hours without providing a second meal period of at least thirty (30) minutes. The "Meal Periods" section of IWC Wage Order No. 14-2001 also states, "[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked."

88. Labor Code section 226.7(b) states, "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..."

89. Labor Code section 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code section 226.7 are wages that are due payable in accordance with Labor Code section 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-114.)

90. Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

91. Labor Code section 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code sections 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: "[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid."

92. Plaintiff alleges that Norman Etchison did not, and does not, have a policy, practice, procedure, guideline, or culture of providing all NormanEtchison Employees with the opportunity to take a thirty (30) minute, uninterrupted, off-duty meal break after their tenth (10th) hour of work, as required by California law.

1 93. Plaintiff alleges that when he and other NormanEtchison Employees worked in excess of
2 ten (10) hours per day, Norman Etchison did not provide the opportunity to take a second off-duty,
3 uninterrupted, thirty (30) minute meal break. Plaintiff and, based on information and belief, other
4 NormanEtchison Employees did not agree to waive their second meal period. In fact, Norman Etchison
5 did not inform NormanEtchison Employees of their entitlement to a second meal period on days they
6 worked in excess of ten (10) hours.

7 94. Plaintiff alleges that Norman Etchison has, and continues to have, a policy, practice,
8 procedure, guideline, and/or culture of not paying the required meal period premiums when a lawful meal
9 period was not provided.

10 95. Plaintiff asserts that despite not being provided with a legally compliant, second meal
11 period, he and other NormanEtchison Employees did not receive one additional hour of pay at the
12 employee's regular rate of pay for each workday a legally compliant meal period was not provided.

13 96. Norman Etchison's unlawful conduct caused Plaintiff and all other NormanEtchison
14 Employees to suffer, and current NormanEtchison Employees will continue to suffer, damages in an
15 amount which is presently unknown, but which will be ascertained according to proof at trial.

16 97. Pursuant to Labor Code section 226.7(c) and IWC Order No. 14, Plaintiff and all other
17 NormanEtchison Employees are entitled to and seek to recover the full amount of unpaid premium wages
18 for unlawful meal periods.

19 98. Pursuant to Labor Code section 218.6, Plaintiff and other all NormanEtchison Employees
20 are entitled to and now seek to recover prejudgment interest on the amount of premium wages owed.

21 99. Plaintiff and all other NormanEtchison Employees are entitled to and therefore seek the
22 penalty outlined in Labor Code section 210 for the late payment of premium wages.

23 100. Plaintiff, on behalf of himself and all other NormanEtchison Employees, is entitled to and
24 seeks recovery of reasonable attorney's fees and costs as permitted by Labor Code section 218.5 and Code
25 of Civil Procedure section 1021.5.

26 101. Plaintiff, on behalf of himself and all other NormanEtchison Employees, requests further
27 relief as described in the below prayer.

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THIRD CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Non-Exempt Class Against Defendants and Does 1-50)

FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS

AND/OR PAY TIMELY COMPENSATION IN LIEU THEREOF

[Labor Code §§ 204, 210, 226.7, 1198, and the “Rest Periods” § of IWC Wage Order No. 14]

102. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

103. Labor Code section 1198 states,

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

104. The “Rest Periods” section of IWC Wage Order No. 14-2001 provides:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3.5) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

105. During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

106. In pertinent part, Labor Code section 226.7 states,

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health

Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for the workday that the meal or rest or recovery period is not provided.

107. Labor Code section 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code section 226.7 are wages that are due and payable in accordance with Labor Code section 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

108. Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

109. Plaintiff alleges that Norman Etchison did not, and does not, have a policy, practice, procedure, guideline, and/or culture of authorizing and permitting Plaintiff and other NormanEtchison Employees to take a third, duty-free, ten (10) minute rest period when they worked more than ten (10) hours in a workday.

110. Plaintiff alleges that Norman Etchison failed to inform Plaintiff and other NormanEtchison Employees of their right to take a third, duty-free, ten (10) minute rest period when they worked more than ten (10) hours in a workday.

111. Plaintiff further alleges that Norman Etchison had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not timely paying the required rest period premiums when a lawful rest period was not provided.

112. Plaintiff asserts that despite not being provided with a legally compliant, third rest period, he and other NormanEtchison Employees did not receive one additional hour of pay at the employee's regular rate of pay for each workday a legally compliant meal period was not provided.

113. Due to Norman Etchison's conduct, Plaintiff and other NormanEtchison Employees have suffered, and will continue to suffer, damages in an amount which is presently unknown, but which will be ascertained according to proof at trial.

114. According to Labor Code section 226.7(c) and IWC Wage Order No. 14-2001, Plaintiff and other NormanEtchison Employees are entitled to and now seek to recover the full amount of unpaid

1 premium wages for non-compliant rest periods.

2 115. Plaintiff and all other NormanEtchison Employees are entitled to and therefore seek the
3 penalty outlined in Labor Code section 210 for the late payment of premium wages.

4 116. Pursuant to Labor Code section 218.6, Plaintiff and all other NormanEtchison Employees
5 are entitled to and now seek to recover prejudgment interest on the amount of premium wages owed.

6 117. Plaintiff, on behalf of himself and all other NormanEtchison Employees, is entitled to and
7 seeks recovery of reasonable attorneys' fees and costs as provided by Labor Code section 218.5 and Code
8 of Civil Procedure section 1021.5.

9 118. Plaintiff, on behalf of himself and all other NormanEtchison Employees, requests further
10 relief as described in the below prayer.

11 **FOURTH CAUSE OF ACTION**

12 **(By Plaintiff Individually and Behalf of the Non-Exempt Class Against Defendants and Does 1-50)**

13 **FAILURE TO TIMELY PAY ALL WAGES DURING EMPLOYMENT**

14 **[Labor Code §§ 204 and 210]**

15 119. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
16 paragraphs of this Complaint.

17 120. Labor Code section 204 establishes an employee's fundamental right in the state of
18 California to be paid wages in a timely manner for their work. Labor Code section 204(a) states that all
19 wages earned are due and payable twice during each calendar month on days designated in advance by
20 the employer as regular pay days. (Labor Code § 204(a).) Overtime wages are to be paid no later than the
21 payday for the next regular payroll period. (Labor Code § 204(b)(1).)

22 121. Labor Code section 210 provides that, "every person who fails to pay the wages of an
23 employee as provided in Section ... 204 ... shall be subject to a civil penalty" of \$100 for an initial
24 violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

25 122. Plaintiff contends that Norman Etchison had, and continues to have, a policy, practice,
26 procedure, guideline and/or culture of not timely paying all wages during employment.

27 123. Plaintiff alleges that Norman Etchison did not pay all minimum, regular and/or premium
28 wages to NormanEtchison Employees at least twice during each calendar month on the days designated

1 in advance by Norman Etchison as regular pay days during employment. Plaintiff further asserts that
2 Norman Etchison did not pay overtime wages to NormanEtchison Employees no later than the payday for
3 the next regular payroll period during employment.

4 124. Due to Norman Etchison's conduct, Plaintiff and other NormanEtchison Employees have
5 suffered, and will continue to suffer, damages in an amount which is presently unknown, but which will
6 be ascertained according to proof at trial.

7 125. Plaintiff and all other NormanEtchison Employees are entitled to and therefore seek the
8 penalty outlined in Labor Code section 210 for the late payment of premium wages.

9 126. Plaintiff, on behalf of himself and other NormanEtchison Employees, is entitled to and
10 seeks recovery of reasonable attorneys' fees and costs as provided by Labor Code section 218.5 and Code
11 of Civil Procedure section 1021.5.

12 127. Plaintiff, on behalf of himself and other NormanEtchison Employees, requests further relief
13 as described in the below prayer.

14 **FIFTH CAUSE OF ACTION**

15 **(By Plaintiff Individually and Behalf of the Sub-Class Against Defendants and Does 1-50)**

16 **FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION OF**
17 **EMPLOYMENT AND/OR PAY WAITING TIME PENALTIES**

18 **[Labor Code §§ 201-203 and 210]**

19 128. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
20 paragraphs of this Complaint.

21 129. Labor Code section 201 states, in pertinent part, "[i]f an employer discharges an employee,
22 the wages earned and unpaid at the time of discharge are due and payable immediately."

23 130. Labor Code section 202, in pertinent part, states:

24 If an employee not having a written contract for a definite period quits his
25 or her employment his or her wages shall become due and payable not later
26 than 72 hours thereafter unless the employee has given 72 hours previous
27 notice of his or her intention to quit, in which case the employee is entitled
28 to his or her wages at the time of quitting.

131. Labor Code section 203(a), in pertinent part, mandates:

1 If an employer willfully fails to pay, without abatement or reduction, in
2 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any
3 wages of an employee who is discharged or who quits, the wages of the
4 employee shall continue as a penalty from the due date thereof at the same
rate until paid or until an action therefore is commenced; but the wages shall
not continue for more than 30 days.

5 132. Labor Code section 210 states, “every person who fails to pay the wages of an employee
6 as provided in Sections ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and
7 \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

8 133. Plaintiff further asserts Norman Etchison had, and continues to have, a policy, practice,
9 procedure, guideline, and/or culture of not timely paying all wages due and owing to NormanEtchison
10 Employees upon separation of employment.

11 134. Plaintiff alleges, for example, Norman Etchison did not immediately pay all his wages
12 owed despite being terminated. To date, Plaintiff has not received all wages due and owing including, but
13 not limited to, all regular, overtime, and premium wages or the required waiting time penalties for the late
14 payment of his wages.

15 135. Plaintiff contends, based on information and belief, that other NormanEtchison Employees
16 were not timely paid all of their wages due and owing upon separation of employment, including all
17 regular, overtime, and premium wages, due in part to the violations asserted herein, and/or the required
18 waiting penalties.

19 136. Norman Etchison knowingly failed to timely and appropriately compensate Plaintiff and
20 other NormanEtchison Employees for all minimum, regular, overtime and/or premium wages upon
21 separation of employment.

22 137. Norman Etchison also knowingly failed to pay the mandated waiting time penalties to all
23 former NormanEtchison Employees who were not timely paid all wages due and owing upon separation
24 of employment.

25 138. Due to Norman Etchison’s willful and deliberate conduct, Plaintiff and other
26 NormanEtchison Employees have suffered, and will continue to suffer, damages in an amount which is
27 presently unknown, but which will be ascertained according to proof at trial.

28 139. As a consequence of Norman Etchison’s willful and deliberate refusal to render such

wages, Plaintiff and all other former NormanEtchison Employees are entitled to and thus seek a maximum of thirty (30) days' wages at their daily rate of pay as a waiting time penalty, pursuant to Labor Code section 203, as well as penalties pursuant to Labor Code section 210.

140. Plaintiff, on behalf of himself and all other former NormanEtchison Employees, is also entitled to and seeks recovery of reasonable attorneys' fees and costs as permitted by Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

141. Plaintiff, on behalf of himself and all other former NormanEtchison Employees, requests further relief as described in the below prayer.

SIXTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Non-Exempt Class Against Defendants and Does 1-50)

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

[Labor Code §§ 226, 226.3, and the "Records" § of IWC Wage Order No. 14]

142. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

143. Labor Code section 1198 states,

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

144. Labor Code section 226(a) states, in pertinent part, that every employer shall furnish each employee with an accurate, itemized wage statement in writing showing:

(1) gross wages earned, (2) total hours worked by the employee, ... (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid ... (7) the name of the employee and only the last four digits of his or her social security number of an employee identification number ... (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

145. The "Records" section of IWC Wage Order No. 14-2001 provides, in pertinent part:

Every employer shall semi-monthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

146. An injury occurs where the employer fails to provide accurate information and the employee cannot "promptly and easily determine" the total number of hours worked or the "applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate." (Labor Code § 226(a)(9)-(e)(2)(B)(i).)

147. Labor Code section 226(e)(2)(c) explains that the phrase "promptly and easily determine" means that "a reasonable person would be able to readily ascertain the information without reference to documents or information."

148. Labor Code section 226(e)(1) further provides,

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000) and is entitled to an award of costs and reasonable attorneys' fees.

149. According to Labor Code section 226(h), "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees."

150. Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

151. Plaintiff asserts Norman Etchison had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not furnishing NormanEtchison Employees with accurate, itemized wage statements that comply with California law.

152. Plaintiff alleges that Norman Etchison failed to furnish NormanEtchison Employees with

1 itemized wage statements that included the actual total regular and overtime hours worked, the applicable
2 hourly rates and corresponding number of hours actually worked at each hourly rate, and the correct
3 amount of gross and net wages earned. The wage statements also did not include the full address of
4 Norman Etchison.

5 153. Due to the lack of information on the wage statements furnished by Norman Etchison,
6 NormanEtchison Employees, such as Plaintiff, were unable to promptly and easily determine, for example,
7 their total number of hours actually worked, the applicable hourly rates in effect during the pay period,
8 the corresponding number of hours worked at each hourly rate, and the address of their employer, among
9 other things.

10 154. As a result of Norman Etchison's conduct, Plaintiff and other NormanEtchison Employees
11 have suffered, and will continue to suffer, damages in an amount which is presently unknown, but which
12 will be ascertained according to proof at trial.

13 155. Plaintiff and all other NormanEtchison Employees are entitled to, and now seek to, recover
14 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
15 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed
16 an aggregate penalty of four thousand (\$4,000) as outlined by Labor Code section 226(e).

17 156. Pursuant to Labor Code section 226(h), Plaintiff and all other NormanEtchison Employees
18 are entitled to and therefore seek injunctive relief in order to ensure that Norman Etchison complies with
19 Labor Code section 226.

20 157. Plaintiff and all other NormanEtchison Employees are entitled to, and now seek to, recover
21 civil penalties pursuant to Labor Code section 226.3 for violations of Labor Code section 226(a).

22 158. Plaintiff and all other NormanEtchison Employees are further entitled to, and seek.
23 recovery of reasonable attorneys' fees and costs as provided under Labor Code section 226(e)(1) and
24 226(h) and Code of Civil Procedure section 1021.5.

25 159. Plaintiff, on behalf of himself and all other NormanEtchison Employees, requests further
26 relief as described in the below prayer.

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SEVENTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Non-Exempt Class Against Defendants and Does 1-50)

FAILURE TO MAINTAIN ACCURATE RECORDS

[Labor Code §§ 226, 1174, 1174.5, and the “Records” § of IWC Wage Order No. 14]

160. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

161. Labor Code section 1198 states,

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

162. Labor Code section 1174 states:

Every person employing labor in this state shall ... keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to ... employees employed at the respective plants or establishments.

163. Pursuant to Labor Code section 226, employers are obligated to keep the information required by the section and afford current or former employees the right to inspect or copy records pertaining to their employment.

164. The “Records” section of IWC Wage Order No. 14-2001 states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period.

165. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

166. Labor Code section 226(e)(1) further provides,

An employee suffering injury as a result of knowing and intentional failure

1 by an employer to comply with subdivision (a) is entitled to recover the
2 greater of all actual damages or fifty dollars (\$50) for the initial pay period
3 in which a violation occurs and one hundred dollars (\$100) per employee
4 for each violation in a subsequent pay period, not to exceed an aggregate
penalty of four thousand (\$4,000) and is entitled to an award of costs and
reasonable attorneys' fees.

5 167. Plaintiff further asserts Norman Etchison had, and continues to have, a policy, practice,
6 procedure, guideline, and/or culture of not maintaining accurate employment records as required by
7 California law.

8 168. Plaintiff alleges Norman Etchison did not institute any clock in, clock out, or timecard
9 procedure, so Norman Etchison knowingly and intentionally failed to maintain accurate records reflecting,
10 for example, the total daily hours actually worked by NormanEtchison Employees, when NormanEtchison
11 Employees began or ended each work period and took meal periods, and all wages earned and paid.

12 169. By and through Norman Etchison's failure to maintain accurate employee records, Plaintiff
13 and all other NormanEtchison Employees were denied their legal right and protected interest in having
14 accurate and complete payroll and employment records available to them.

15 170. As a result of Norman Etchison's conduct, Plaintiff and all other NormanEtchison
16 Employees have suffered, and will continue to suffer, damages in an amount which is presently unknown,
17 but which will be ascertained according to proof at trial.

18 171. Plaintiff and all other NormanEtchison Employees are entitled to, and now seek, damages
19 and penalties as outlined in Labor Code section 226(e)(1) and 1174.5.

20 172. Plaintiff, on behalf of himself and all other NormanEtchison Employees, is entitled to and
21 seeks recovery of reasonable attorneys' fees and costs as provided by Labor Code section 226(e)(1) and
22 Code of Civil Procedure section 1021.5.

23 173. Plaintiff, on behalf of himself and all other NormanEtchison Employees, requests further
24 relief as described in the below prayer.

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EIGHTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Non-Exempt Class Against Defendants and Does 1-50)

VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW

[Bus. & Prof. Code §§ 17200, *et seq.*]

174. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

175. California’s Unfair Competition Law (“UCL”) broadly prohibits “any unlawful, unfair or fraudulent business act or practice.”

176. A cause of action may be brought under the UCL if a practice violates some other law. The “unlawful” prong of the UCL effectively deems a violation of the underlying law a per se violation of Business & Professions Code sections 17200, *et seq.* (*Cel-Tech Commc’ns, Inc v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal or state, statutory, or common law – can serve as a predicate for a section 17200 “unlawful” violation. (*Farmers Ins. Exch. v. Superior Court* (1992) 2 Cal.4th 377, 383.)

177. The “unfair” prong of the UCL does not require a practice to be specifically proscribed by any law. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134, 1143.) Pursuant to the California Supreme Court, the “unfair standard” is intentionally broad to give maximum discretion to courts in prohibiting new schemes to defraud. (*Cel-Tech Commc’ns, Inc., supra*, 20 Cal.4th at 180-81.)

178. Under the UCL, a “fraudulent” business act or practice is one where “members of the public are likely to be deceived.” (*Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 49.) A showing of actual deception, reasonable reliance, or damages is not required. (*Ibid.*) The fraudulent prong may be used to attack the deceptive manner in which otherwise lawful contract terms are presented to an individual. (*Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230, 253.) As such, even a true statement may be unlawful under section 17200 if it is “couched in such a manner that is likely to mislead or deceive..., such as by failing to disclose other relevant information.” (*Ibid.*)

179. As discussed herein, Norman Etchison’s business practices violate all three prongs of California’s UCL.

///

Unlawful Business Practices

180. As described herein, Norman Etchison violated the Labor Code by, among other things, refusing to properly and timely compensate NormanEtchison Employees for all time worked, including overtime wages. Failing to compensate employees for all time worked is a clear violation of California law, and thus a per se violation of the UCL. (*Cel-Tech Commc'ns, Inc., supra*, 20 Cal.4th at 180.) Norman Etchison further violated California law by failing to provide legally compliant meal and rest periods and/or by failing to pay premium wages in lieu thereof; failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failing to furnish accurate itemized wage statements; and failing to maintain accurate records. Therefore, Norman Etchison has clearly engaged in unlawful business practices.

Unfair Business Practices

181. Norman Etchison intentionally avoided paying Plaintiff and all other NormanEtchison Employees all wages, including overtime and premium wages, in order to artificially lower the cost of doing business. Norman Etchison's conduct unfairly deprived NormanEtchison Employees of all earned wages. Norman Etchison also unfairly denied NormanEtchison Employees their right to meal and rest periods by failing to inform them of their rights or provide them with the legally required meal and rest periods. Further, Norman Etchison unfairly denied NormanEtchison Employees to access to accurate wage statements and employee records in order to readily ascertain whether they were properly compensated.

Fraudulent Business Practices

182. Norman Etchison acted fraudulently when it failed to timely pay NormanEtchison Employees all earned wages, including overtime and premium wages. Additionally, Norman Etchison regularly provided NormanEtchison Employees with wage statements containing false information, particularly because NormanEtchison did not record hours worked or when meal periods were taken.

183. As a direct and proximate result of Norman Etchison's unlawful, unfair, and fraudulent business practices, Plaintiff and other NormanEtchison Employees have suffered injury-in-fact and have lost wages rightfully owed to them.

184. Through its unlawful, unfair, and fraudulent conduct, Norman Etchison has been unjustly

1 enriched by receiving and continuing to receive benefits and profits at the expense of Norman Etchison
2 Employees. Therefore, pursuant to Business & Professions Code sections 17200, *et seq.*, Norman Etchison
3 should be enjoined from this activity and made to disgorge all ill-gotten gains and restore Plaintiff and all
4 other Norman Etchison Employees the wages wrongfully withheld from them.

5 185. Moreover, the unlawful, unfair, and fraudulent conduct alleged herein has continued, and
6 there is no indication that Norman Etchison will refrain from such activity in the future. Plaintiff believes
7 and alleges that if Norman Etchison is not enjoined from the conduct described herein, Norman Etchison
8 will continue to violate California law at the expense of Norman Etchison Employees. Accordingly,
9 Plaintiff requests that the court issue a preliminary injunction against Norman Etchison.

10 186. Plaintiff, on behalf of himself and all other Norman Etchison Employees, requests further
11 relief as described in the below prayer.

12 **NINTH CAUSE OF ACTION**

13 **(By Plaintiff on Behalf of All Aggrieved Employees Against Defendants and Does 1-50)**

14 **VIOLATION OF CALIFORNIA'S PRIVATE ATTORNEYS' GENERAL ACT**

15 **[Labor Code §§ 2698, *et seq.*]**

16 187. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
17 paragraphs of this Complaint.

18 188. Plaintiff, in his representative capacity on behalf of himself and all other Norman Etchison
19 Employees, is entitled to, and therefore seeks to, recover civil penalties through a representative law
20 enforcement action based on violations of the following Labor Code and/or IWC Wage Order No. 14-
21 2001 provisions:

- 22 a. Failure to timely pay minimum, regular, and/or overtime wages in violation of
23 Labor Code sections 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the
24 "Minimum Wages" and "Hours and Days of Work" sections of IWC Wage Order
25 No. 14;
26 b. Failure to provide legally compliant meal periods and/or timely pay premium wages
27 for non-compliant meal periods in violation of Labor Code sections 204, 226.7,
28 512, 558, 1198, and the "Meal Periods" section of IWC Wage Order No. 14;

- c. Failure to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods in violation of Labor Code sections 204, 226.7, 1198, and the “Rest Periods” section of IWC Wage Order No. 14;
- d. Failure to timely pay all wages due during employment in violation of Labor Code sections 204 and 210;
- e. Failure to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties in violation of Labor Code sections 201-203;
- f. Failure to furnish accurate itemized wage statements in violation of Labor Code sections 226, 226.3, 1198, and the “Records” section of IWC Wage Order No. 14;
- g. Failure to maintain accurate records in violation of Labor Code sections 226, 1174, 1174.5, 1198, and the “Records” section of IWC Wage Order No. 14.

189. Labor Code section 210 provides that any person who fails to pay wages as provided in Labor Code sections 201.3, 203, 204, 204(b), 204.1, 204.2, 205, 205.5, and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff, in his representative capacity on behalf of himself and all other NormanEtchison Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code section 210.

190. Labor Code section 226.3 imposes a civil penalty of \$250 per employee per violation for an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in section 226(a), this civil penalty in addition to any other penalty provided by law. Plaintiff, in his representative capacity on behalf of himself and all other NormanEtchison Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code section 226.3.

191. For violations of Labor Code sections 510 and 512, in addition to any other recovery provided by law, Labor Code section 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for the initial violation and \$100 per pay period for each underpaid employee for each

subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC. Plaintiff, in his representative capacity on behalf of himself and all other NormanEtchison Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code section 558.

192. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Plaintiff, in his representative capacity on behalf of himself and all other NormanEtchison Employees, is entitled to, and therefore seeks, the civil penalty imposed by section 1174.5.

193. Labor Code section 1197.1 imposes a civil penalty of \$100 for each underpaid employee for each pay period for which the employee is underpaid and a subsequent civil penalty of \$250 for each underpaid employee for each pay period for which the employee is underpaid for paying or causing an employee to be paid a wage less than the minimum wage. Plaintiff, in his representative capacity on behalf of himself and all other NormanEtchison Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code section 1197.1.

194. Labor Code section 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174, 1194, 1197, 1197.1, and 1198. Plaintiff, in his representative capacity on behalf of himself and all other NormanEtchison Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code section 2699(f).

195. Labor Code section 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other NormanEtchison Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

196. Plaintiff, in his representative capacity on behalf of himself and all NormanEtchison Employees, is entitled to, and seeks, recovery of reasonable attorneys' fees as provided by Labor Code

section 218.5 and Code of Civil Procedure section 1021.5.

PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendants in favor of the class action and PAGA enforcement action as follows:

- a. For an order determining that this action may be maintained as a class action with the named Plaintiff as the class representative;
- b. For the attorneys appearing on the above caption to be named class counsel;
- c. For all wages and benefits due to Plaintiff and all other NormanEtchison Employees pursuant to California law;
- d. For all minimum, regular, and/or overtime wages owed pursuant to Labor Code sections 510, 558, 1194, 1197.1, and/or other applicable law;
- e. For premium wages pursuant to Labor Code section 226.7, and/or other applicable law;
- f. For waiting time penalties pursuant to Labor Code section 203, and/or other applicable law;
- g. For damages, pursuant to Labor Code section 226(e)(1), Civil Code section 3281, and/or other applicable law;
- h. For all liquidated damages, pursuant to Labor Code sections 1194.2, 1197.1, and/or other applicable law;
- i. For any and all penalties available for the Labor Code and IWC Wage Order violations alleged herein, including penalties under Labor Code sections 203, 210, 226(e)(1), 226.3, 558, 1174.5, 1197.1, 2699(f), and/or other applicable law;
- j. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code § 2699(f);
- k. For injunctive relief, pursuant to Labor Code section 226(h) and Business & Professions Code section 17203, and/or other applicable law;

- l. For restitution for Defendants’ unfair, unlawful, and fraudulent business practices as provided by Labor Code section 1197.1 and Business & Professions Code section 17203 and/or other applicable law;
- m. For reasonable attorneys’ fees and costs of suit pursuant to Labor Code sections 218.5, 226(e)(1), 226(h), 1194(a), 2299(g)(1), Code of Civil Procedure section 1021.5, the “common fund” theory, the “substantial benefit” theory, and/or other applicable law, theory, or doctrine;
- n. For a declaratory judgment that Defendants violated Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198; the “Minimum Wages,” “Hours and Days of Work,” “Meal Periods,” “Rest Periods” and “Records” sections of IWC Wage Order 14-2001; and Business and Professions Code sections 17200, *et seq.*;
- o. For pre- and post- judgment interest as provided by California law;
- p. For appropriate equitable relief pursuant to California law; and
- q. For any other relief, the Court may deem as just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on issues triable to a jury.

Respectfully submitted,

Dated: June 23, 2022

GRAHAMHOLLIS APC

By: Monique R. Rodriguez
GRAHAM S.P. HOLLIS
VILMARIE CORDERO
HALI M. ANDERSON
MONIQUE R. RODRIGUEZ
Attorneys for Plaintiff Jesús Muñiz

EXHIBIT 1

January 31, 2022

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Monique R. Rodriguez
mrodriguez@grahamhollis.com
619.546.4373 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

California Division of Occupational Health and Safety
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Norman Etchison, Inc.
7151 Meadows of the Kern
Bakersfield, CA 93308

Norman Etchison, Inc.
c/o Norman Etchison, Agent for Service of Process
7151 Meadows of the Kern
Bakersfield, CA 93308

Re: Jesus Muniz's PAGA Claims Against Norman Etchison, Inc.

Dear Labor and Workforce Development Agency and Norman Etchison, Inc.:

Please be advised that Jesus Muniz ("Claimant") has retained our firm, **GrahamHollis**, APC, to represent him for various claims against his former employer, Norman Etchison, Inc. ("the Company").

This letter shall serve as Claimant's written notice to the Labor and Workforce Development Agency ("LWDA") and the Company of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Company committed against him and all other current and former non-exempt employees of the Company who performed work in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support the Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code section 2699.3.

Pursuant to Labor Code section 2699(a), and by way of this letter, Claimant intends to represent himself and other current and former non-exempt employees of the Company who performed in California during the relevant statutory period ("Etchison

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

David Lin

Erik Dos Santos

Monique Rodriguez

Nora Steinhagen

Alyssa Smith

Allison Schubert

*Provisionally Licensed Lawyer

Employees”). All Etchison Employees, including Claimant, are believed to have suffered at least one of the wage and hour violations described herein. Claimant contends that he and all other Etchison Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Norman Etchison, Inc. is a California corporation with its principal place of business in Bakersfield, California. The Company is believed to be a farm that is involved in the practice of agricultural arts, as defined by California Food and Agricultural Code section 47000.5(b), including, but not limited to, the actions of planting, growing, fertilizing, irrigating, cultivating, and harvesting of almonds. Norman Etchison, Inc. is believed to employ more than 25 employees, particularly during peak season, which is July through October.

Claimant was employed by, or otherwise performed work for, the Company, as a seasonal agricultural worker at its almond farm in Bakersfield from approximately August 3, 2021 through and including October 2021. As an agricultural worker, Claimant was largely responsible for harvesting almonds, but also engaged in other duties. Claimant typically worked 10-12 hour shifts, Monday – Saturday for a total of approximately 60 hours per week. Claimant earned \$15 per hour and was to be paid on a weekly basis. At all relevant times, Claimant was classified by the Company as a non-exempt employee for purposes of the Labor Code and the Industrial Welfare Commission Wage (“IWC”) Wage Orders.

Claimant contends that at all relevant times, the Company employed, and continues to employ, Etchison Employees in California. Claimant further contends, based on information and belief, that all policies, practices, procedures, and/or guidelines of the Company that were applicable to Claimant were also applicable to all Etchison Employees throughout the relevant time period. Moreover, Claimant asserts, based on information and belief, that he and all other Etchison Employees have suffered, and will continue to suffer, the same and/or similar violations of law described herein.

Claimant alleges that the Company denied, and continues to deny, Claimant and other Etchison Employees the rights afforded to them under the Labor Code and IWC Wage Order No. 14-2001. Specifically, Claimant asserts that the Company failed to timely pay minimum, regular, and/or overtime wages; failed to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods; failed to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods; failed to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failed to furnish accurate itemized wage statements; failed to maintain accurate records; and failed to provide a safe and healthful work place.

Claimant asserts that the Company had, and continues to have, a policy, practice, procedure, and/or guideline of not timely paying all Etchison Employees for all minimum, regular and/or overtime wages for all time engaged in work or spent under the control of the Company. For instance, the Company did not require Etchison Employees to clock in, clock out, or keep a time card, resulting in Etchison Employees, such as Claimant, not being paid for all time engaged in work or spent under the control of the Company. Furthermore, the Company rounded the hours that were worked by Claimant, and Claimant, on information and belief, asserts that other Etchison Employees had their hours similarly rounded. The rounding of hours

caused Etchison Employees, including Claimant, to not be paid the hours actually worked on the pay day designated in advance by the Company. Claimant believes that he was not paid for 9 hours of work during his employment with the Company as a result of the Company's failure to accurately record all hours worked. Additionally, Claimant and other Etchison Employees regularly worked between 10-12 hours per work day, six days a week. However, the Company did not properly pay Etchison Employees overtime wages no later than the next regular pay day. For instance, in 2021 the Company did not pay Etchison Employees, including Claimant, overtime wages for work performed in excess of 8 ½ hours per work day or 45 hours per week during the time period it regularly employed more than 25 employees as required by IWC Wage Order 14-2001. As a result of the Company's policies, practices, procedures, and/or guidelines, Etchison Employees were not timely or properly paid all minimum, regular and/or overtime wages.

Claimant contends that the Company had, and continues to have, a policy, practice, procedure, and/or guideline of not providing Etchison Employees with the opportunity to take legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods. For instance, despite working in excess of 10 hours per work day, the Company did not provide Etchison Employees with the opportunity to take a second off-duty, uninterrupted 30 minute meal period after their 10th hour of work. Claimant, and based on information and belief, other Etchison Employees did not mutually agree to waive their second meal period. In fact, the Company did not inform Etchison Employees that they were entitled to a second meal period on days they worked in excess of 10 hours. Although Claimant and other Etchison Employees were not provided with the opportunity to take a second meal period on days they worked more than 10 hours, the Company did not timely pay Etchison Employees, such as Claimant, premium wages at one additional hour of pay at the employee's regular rate of compensation for each work day a legally compliant meal period was not provided.

Claimant alleges that the Company had, and continues to have, a policy, practice, procedure, and/or guideline of not authorizing and permitting Etchison Employees to take legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods. For example, the Company did not authorize and permit Etchison Employees, such as Claimant, to take a third duty free 10 minute rest period when they worked more than 10 hours in a work day. The Company failed to inform Etchison Employees that they had the right to take a third 10 minute rest period when they worked more than 10 hours in a work day. The Company also did not timely pay Etchison Employees, including Claimant, premium wages at one additional hour of pay at the employee's regular rate of compensation for each work day a lawful rest period was not provided.

Claimant asserts that the Company had, and continues to have, a policy, practice, procedure, and/or guideline of not timely paying all wages due and owing to Etchison Employees upon separation of employment and/or the required waiting time penalties for the late payment of such wages. For instance, despite being terminated from his employment by the Company, the Company did not immediately pay Claimant all of his wages due and owing including, but not limited to, all regular, overtime, and premium wages, due in part to the violations discussed herein. To date, Claimant has not received all wages owed to him or the required waiting time penalties for the late payment of his wages. Claimant contends, based on information and belief, that other Etchison Employees were not timely paid all of their wages due and owing upon separation of employment, including all regular, overtime, and premium wages, due in part to the violations asserted herein, and/or the required waiting time penalties.

Claimant contends that the Company had, and continues to have, a policy, practice, procedure, and/or guideline of not furnishing Etchison Employees with accurate itemized wage statements that comply with California law. For example, the Company failed to furnish Claimant and other Etchison Employees with itemized wage statements that included the actual total regular and overtime hours worked during the pay period, the applicable hourly rates and the corresponding number of hours actually worked at each hourly rate, and the correct amount of gross and net wages earned. The wage statements also did not include the full address of the Company, as it only included the name of the Company, the city, state and zip code. As a result of the missing and/or incorrect information, Etchison Employees were unable to promptly and easily determine, for example, their actual hours worked, their actual earned wages, and their employer.

Claimant alleges that the Company had, and continues to have, a policy, practice, procedure, and/or guideline of not maintaining accurate employment records as required by California law. The Company did not require Etchison Employees to clock in, clock out, or keep a time card. As a result, among other things, the Company has failed to maintain accurate time records showing when the employee began or ended each work period. The Company also failed to record meal periods taken and total daily hours actually worked by Etchison Employees.

Claimant contends that the Company had, and continues to have, a policy, practice, procedure, and/or guideline of failing to provide Etchison Employees with a safe and healthful place of employment. For example, Claimant and other Etchison Employees were not provided with access to shade from the grueling heat, when the temperature exceeded 80 degrees Fahrenheit or upon request by an employee when working outdoors. The Company also failed to inform Etchison Employees, including Claimant, that they were entitled to cooling-down periods in the shade when they felt the need to protect themselves from overheating. Etchison Employees were not paid one additional hour of pay at the employee's regular rate of compensation for each workday that the cool down period (i.e., recovery period) was not provided. Claimant further asserts that he and other Etchison Employees did not readily have access to potable drinking water. In fact, water was only available upon request, at which point a water truck would drive over, provide water, and then immediately leave. The Company's policies, practices, procedures, and/or guidelines, both singularly and in the aggregate, contributed substantially to an unsafe and unhealthy place of employment.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, all Etchison Employees, including Claimant, certain rights afforded to them under the Labor Code and applicable IWC Wage Order. Claimant makes these claims against the Company on behalf of himself and all other Etchison Employees.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Norman D. Etchison, Ruby Mae Etchison, and/or Clay Etchison, may be liable for violations for PAGA civil penalties under Labor Code §§ 558 and 1197.1 as "other person(s)" who caused the violations alleged herein. (See *Atemmpa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ["if there is evidence and a finding that a party *other than the employer* 'violates, or causes of be violated' the overtime laws (§ 558(a)), or 'pays or causes to be paid to an employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties *regardless of the identity or business structure of the employer*"]; *Moua v. IBM* (N.D. Cal. 2019) 2019 US Dist. LEXIS 40851.)

All facts, claims, and/or legal theories contained in this written notice are alleged and/or asserted on behalf of Claimant and all other Etchison Employees. The facts, claims, and/or legal theories contained in this written notice are based upon information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or legal theories discovered after the sending of this written notice on behalf of himself and all Etchison Employees against the Company and/or other persons that may be discovered after the sending of this written notice. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm and/or damages alleged herein, or otherwise participated in or ratified any of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise this written notice, including the facts, claims and/or theories alleged, and/or to add any new claims, facts, and/or theories by amending this written notice and/or by adding any such claims, facts, and/or theories to his civil complaint.

FAILURE TO TIMELY PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the
“Minimum Wages” and “Hours and Days of Work” sections of IWC Wage Order 14-2001)

Labor Code section 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code section 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise”].) The “Minimum Wages” section of IWC Wage Order No. 14-2001 further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code section 1198 states,

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

///

Labor Code section 510(a), which codifies an employee's right to overtime compensation, provides:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The "Hours and Days of Work" section of IWC Wage Order No. 14-2001 mandates that as of January 1, 2021 employees shall not be employed more than eight and one-half (8.5) hours in any one workday or more than forty-five (45) hours in any workweek unless the employee receives one and one-half (1.5) times such employee's regular rate of pay for all excess hours worked when the employer employs more than 25 employees during the relevant time period. Furthermore, the "Minimum Wages" section of IWC Wage Order No. 14-2001 requires that such employees be paid a minimum wage of not less than fourteen dollars (\$14.00) per hour for the year 2021. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code section 1197.1 states,

[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code section 1194(a) provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code section 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code section 210 states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code section 558 states that, “[a]ny employer or other person. . .who violates. . .any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty. . .” Subdivision (a)(1) continues, “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Subdivision (a)(2) states, “[f]or each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

As set forth above, the Company failed to pay Claimant and other Etchison Employees all minimum, regular, and overtime wages as required by law. For example, as set forth above, the Company did not require Etchison Employees to clock in, clock out, or keep a time card, which thereby resulted in Etchison Employees, such as Claimant, to not be paid for all time engaged in work or spent under the control of the Company. Also, the Company would round the hours of Claimant and, on information and belief, other Etchison Employees, thereby depriving Claimant and these other employees of potential minimum and regular wages. Claimant believes that he was deprived of nine (9) hours of wages for the time that was shaved from his work days.

Furthermore, as is also set forth above, Claimant asserts that overtime wages were not paid until after the tenth hour of work, meaning that Claimant lost at least one and a half hours per day of overtime wages while working for the Company. Claimant and other Etchison Employees regularly worked between ten and twelve (10 – 12) hours per day, six days per week, but were not paid overtime wages until they had worked ten hours.

As a result of the Company’s policies, practices, procedures, and/or guidelines, Etchison Employees were not timely or properly paid all minimum, regular and/or overtime wages. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other current and former Etchison Employees to the extent allowed by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS AND/OR
TIMELY PAY PREMIUM WAGES FOR NON-COMPLIANT MEAL PERIODS**

(Labor Code §§ 226.7, 512, 558, 1198, and the “Meal Periods” section of the IWC Wage Order 14-2001)

Labor Code section 512(a) states, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” and “[a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

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Labor Code section 226.7(c) states,

[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The "Meal Periods" section of IWC Wage Order No. 14-2001 states that an employee may not work for a period of more than five (5) hours without providing the employee with a meal period of at least thirty (30) minutes. The "Meal Period" section of IWC Wage Order No. 14-2001 also states that an employer may not employ an employee for more 10 or more hours without providing a second meal period of at least thirty (30) minutes.

A meal period generally comports with the requirements of California law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036). The "Meal Periods" section of the applicable IWC Wage Order also states, "[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

Labor Code section 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code section 226.7 are wages that are due payable in accordance with Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114).

Labor Code section 558 states that, "[a]ny employer or other person. . .who violates. . .any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty. . ." Subdivision (a)(1) continues, "[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Subdivision (a)(2) states, "[f]or each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid."

As set forth above, the Company failed to provide Claimant and other Etchison Employees with the opportunity to take uninterrupted, off-duty meal breaks of at least 30-minutes after their tenth hour of work, as required by California law. Despite working in excess of 10 hours per work day, the Company did not provide Etchison Employees with the opportunity to take a second off-duty, uninterrupted meal period after their tenth hour of work. Consequently, Claimant and other Etchison Employees are entitled to receive one-hour of premium wages for each day a compliant meal break was not provided. However, the Company failed to pay Claimant and Etchison Employees all premium wages as required by law. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other current and former Etchison Employees to the extent allowed by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS AND/OR
TIMELY PAY PREMIUM WAGES FOR NON-COMPLIANT REST PERIODS**

(Labor Code §§ 204, 226.7, and the “Rest Periods” section of IWC Wage Order No. 14-2001)

The “Rest Periods” section of IWC Wage Order No. 14-2001 provides:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

In pertinent part, Labor Code section 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for workday that the meal or rest or recovery period is not provided.

Labor Code section 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code section 226.7 are wages that are due payable in accordance with the Labor Code section 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As set forth above, Etchison Employees were not permitted to take legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods. For example, the Company did not

authorize and permit Etchison Employees, such as Claimant, to take a third duty-free 10 minute rest period when they worked more than 10 hours in a work day. The Company failed to inform Etchison Employees that they had the right to take a third 10 minute rest period when they worked more than 10 hours in a work day. The Company also did not timely pay Etchison Employees, including Claimant, premium wages at one additional hour of pay at the employee's regular rate of compensation for each work day a lawful rest period was not provided. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other current and former Etchison Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION OF
EMPLOYMENT AND/OR THE REQUIRED WAITING TIME PENALTIES**

(Labor Code §§ 201- 203)

Labor Code section 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states, in pertinent part, "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code section 203(a) states, in pertinent part,

[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

As set forth above, the Company violated these Labor Code sections by not paying to Claimant and other Etchison Employees all minimum, regular, and overtime wages, and meal and rest break premium wages, within the required time during and upon separation of their employment. For instance, despite being terminated from his employment by the Company, the Company did not immediately pay Claimant all of his wages due and owing upon the separation of employment, including, but not limited to, all regular, minimum, overtime, and premium wages, due in part to the violations discussed herein. To date, Claimant has not received all wages owed to him or the required waiting time penalties for the late payment of his wages. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other current and former Etchison Employees to the extent allowed by law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and the "Records" section of IWC Wage Order No. 14-2001)

Labor Code section 226(a) states in pertinent part that every employer shall furnish each employee with an accurate, itemized wage statement in writing showing:

(1) gross wages earned, (2) total hours worked by the employee, ..., (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid . . . (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number . . . (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code section 226(e)(1) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and reasonable attorney's fees.

Labor Code section 226(h) further states, "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees."

Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation for violations of Labor Code section 226(a).

As set forth above, the Company failed to provide Claimant and other Etchison Employees with accurate itemized wage statements that comply with the requirements of the Labor Code, because the wage statements issued did not include, among other violations, the total regular and overtime hours actually worked, the applicable hourly rates and corresponding number of hours worked at each hourly rate, the correct amount of gross and net wages earned, and the name and address of the employer. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other current and former Etchison Employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226, 1174, 1174.5, 1198, and the "Records" section of IWC Wage Order 14-2001)

Labor Code section 1174 states, "[e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments."

An employer is further obliged under Labor Code section 226(b) to keep the information required by Labor Code section 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment. The "Records" section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records

showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period.

Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

Labor Code section 226(e)(1) provides:

[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

As set forth above, the Company violated these requirements by failing to accurately record Etchison Employees' hours worked including, but not limited to, the Company's failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the wages paid. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other current and former Etchison Employees to the extent allowed by law.

FAILURE TO MAINTAIN A SAFE AND HEALTHFUL PLACE OF EMPLOYMENT
(Labor Code §§ 6400 *et seq.*; and Title 8 of the California Code of Regulations, § 3395)

Labor Code sections 6400 and 6404 establish the obligation of an employer to furnish its employees with a place of employment that is safe and healthful. Labor Code section 6401 provides:

Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

(See also, Labor Code section 6403 [prohibiting an employer from failing or neglecting to perform its obligations under Labor Code section 6401]).

Pursuant to Labor Code sections 6401.7(b) and 6402, an employer is required to correct any unsafe and/or unhealthy condition in a timely manner, and is further prohibited from permitting or requiring an employee to go or be in a place of employment that is not safe and healthful.

An employer is required to provide shade for employees once the outside temperature rises above eighty (80) degrees Fahrenheit, per Title 8 of the California Code of Regulations, section 3395. The same Code section requires a ten minute “cooling down” period every two hours when the temperature rises above ninety-five (95) degrees Fahrenheit. Also found in this Code Section is a requirement that employees have access to potable drinking water, located as close as practicable to the areas where employees are working.

For violations of Labor Code sections 6400 *et seq.*, Labor Code section 6317 permits the California Division of Occupational Health and Safety to impose civil penalties against employers as specified in section 6423, which states the following:

[e]very employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who . . . (l) [k]nowingly or negligently violates any standard, order, or special order, or any provision of this division, or of any part thereof in . . . [i]s punishable by . . . a fine not to exceed five thousand dollars (\$5,000).

Furthermore, employers that repeatedly violate “any standard, order, or special order, or provision of this division, or any part thereof in, or authorized by, this part, which repeated violation creates a real and apparent hazard to the employees” are subject to “a fine not exceeding fifteen thousand dollars (\$15,000). . . . If the defendant is a corporation or a limited liability company, the fine may not exceed one hundred fifty thousand dollars (\$150,000).” (Labor Code § 6423(d).)

Claimant alleges that the Company failed to maintain a safe and healthful place of employment for Company employees, including himself. For example, the Company failed to provide access to water, failed to provide shade, and failed to inform Claimant of the availability of cooling down periods for heat. The Company has failed to provide and maintain a safe and healthful place of employment for Company employees, including Claimant. Claimant will pursue all available remedies against the Company for its violations of California law on behalf of himself and all other current and former Etchison Employees to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code §§ 210, 226(f), 226.3, 558, 558.1, 1174.1, 1174.5, 1197.1, 2699(f), 6317, and 6342)

Labor Code section 210 provides that any person who fails to pay wages as provided in sections 201.3 and 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or if the failure to pay the wages was willful or intentional then \$200, plus 25% if the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation. For violations of Labor Code section 226(c), Labor Code section 226(f) permits the current or former employee, or the Labor Commission, to recover a \$750 penalty from the employer.

Labor Code section 558 subjects any employer or any person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558.1) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows:

[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.

Labor Code section 558.1(a) states:

[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation. This includes the owners, officers, directors, or managing agents of the employer.

Labor Code section 558.1(b) extends the liability of section 558.1(a) to the owners, officers, directors, and/or managing agents of the employer.

For violations of Labor Code section 1174 subdivisions (b), (c), and (d), Labor Code section 1174.5 imposes a civil penalty of \$500.

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

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any

applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code section 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee, for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 226(a), 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 6400 *et seq.*, and relevant IWC Wage Orders.

For violations of Labor Code sections 6400 *et seq.*, Labor Code section 6317 permits the California Division of Occupational Health and Safety to impose civil penalties against employers as specified in section 6423, which states the following:

[e]very employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who . . . (l) [k]nowingly or negligently violates any standard, order, or special order, or any provision of this division, or of any part thereof in . . . [i]s punishable by . . . a fine not to exceed five thousand dollars (\$5,000).

Furthermore, employers that repeatedly violate “any standard, order, or special order, or provision of this division, or any part thereof in, or authorized by, this part, which repeated violation creates a real and apparent hazard to the employees” are subject to “a fine not exceeding fifteen thousand dollars (\$15,000). . . . If the defendant is a corporation or a limited liability company, the fine may not exceed one hundred fifty thousand dollars (\$150,000).” (Labor Code § 6423(d).)

As set forth above, the Company violated the Labor Code and IWC Wage Order No. 14-2001 by, among other things, to failing to timely pay minimum, regular, and/or overtime wages; failing to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods; failing to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods; failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failing to furnish accurate itemized wage statements; failing to maintain accurate records; and failed to provide a safe and healthful work place. As a result, the Company is liable for civil penalties under Labor Code sections 210, 226(f), 226.3, 558, 558.1, 1174.1, 1174.5, 1197.1, 2699(f), 6317, 6342, and 2699(f). Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Company’s violations of the Labor Code and IWC Wage Order on behalf of himself and other current and former Etchison Employees to the extent allowed by law.

ATTORNEYS’ FEES, COSTS, INTEREST, LIQUIDATED DAMAGES, AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, and 2698 *et seq.*)

Labor Code sections 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, and 2698 *et seq.*, among others, give employees, such as Claimant, the right to recover in a civil action the full amount of

damages, liquidated damages, and penalties, including interest thereon, as well as reasonable attorneys' fees and costs.

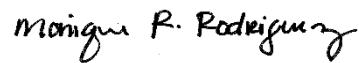
Pursuant to Labor Code section 2699(i), an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Under Labor Code section 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorneys' fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs, and attorneys' fees and he will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided under PAGA, on behalf of himself and other current and former Etchison Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and IWC Wage Order No. 14-2001, thereby depriving Claimant and other Etchison Employees of the rights and protections afforded to them. Specifically, Claimant contends that the Company violated Labor Code §§ 201, 202, 203, 204, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 6400 *et seq.*, as well as IWC Wage Order 14-2001. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all current and former Etchison Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the California agencies decline to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other current and former Etchison Employees, as permitted by the PAGA.

Sincerely,



Monique R. Rodriguez