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Clerk of the Superior Court
By Regina Chanez, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

GUSTAVO GAYOT REYES, an individual;
and on behalf of other aggrieved employees
and the State of California

Plaintiff,

v.

ALAZZAWI INSTALLATIONS LLC, a
California limited liability company; OMAR
ALAZZAWI, an individual; FARM FRESH
TO YOU, LLC, a Delaware limited liability
company; CAPAY INCORPORATED (dba
FARM FRESH TO YOU); THE WOLF
LOGISTIC, LLC, a Washington limited
liability corporation; FREEMAN BARSOTTI,
an individual; THADDEUS BARSOTTI, an
individual; and DOES 1-100, inclusive

Defendants.

CASE NO: 37-2022-00000423-CU-OE-CTL

FIRST AMENDED COMPLAINT FOR:

1. MINIMUM WAGE VIOLATIONS
2. OVERTIME VIOLATIONS
3. MEAL PERIOD VIOLATIONS
4. REST PERIOD VIOLATIONS
5. RECORDS VIOLATIONS
6. WAITING TIME PENALTIES
7. UNFAIR BUSINESS PRACTICES
8. LC § 2699 (PAGA) CLAIMS

Complaint Filed: January 5, 2022

Judge: Hon. Eddie C. Sturgeon

Department: C67

Trial: TBD

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1 Plaintiff GUSTAVO GAYOT REYES (also referred to as "Plaintiff" or REYES")
2 alleges as follows:

3 **JURISDICTION & DEFENDANTS**

4 9. This action arises out of acts, representations and events occurring within the
5 jurisdiction of the County of San Diego and the San Diego Judicial District.

6 10. Defendant ALAWAZZI INSTALLATIONS LLC (hereinafter also referred to as
7 "LLC" or one of the "Defendants" or "Entity Defendants") is a California limited liability
8 company with its principal place of business located at 1652 Hilton Head Court, Suite 190, El
9 Cajon, California 92019, and during all times mentioned herein was doing business in the State
10 of California in and around the County of San Diego. At all times relevant herein, LLC
11 possessed and exerted control over Plaintiff's pay and working conditions.

12 11. Defendant FARM FRESH TO YOU, LLC (hereinafter also referred to as
13 "FARM FRESH" or one of the "Defendants" or "Entity Defendants") is a Delaware limited
14 liability company doing business in California with its principal business office in California
15 located at 3880 Seaport Boulevard, West Sacramento, California 95691. During all times
16 relevant herein, FARM FRESH possessed and exerted control over Plaintiff's pay and working
17 conditions and was a joint employer of Plaintiff along with ALAWAZZI and other Entity
18 Defendants.

19 12. Defendant CAPAY FARMS INCORPORATED (dba FARM FRESH TO YOU)
20 (hereinafter also referred to as "CAPAY" or one of the "Defendants" or "Entity Defendants") is
21 a California corporation with its principal "business" office in California located at 23820 State
22 Highway 16, Capay, California 95691. CAPAY claims a principal "executive" office in 3880
23 Seaport Boulevard, West Sacramento, California 95691. During all times relevant herein,
24 CAPAY possessed and exerted control over Plaintiff's pay and working conditions and was a
25 joint employer of Plaintiff along with ALAWAZZI and other Entity Defendants.

26 13. Defendant THE WOLF LOGISTIC LLC. (hereinafter referred to as "WOLF" or
27 one of the "Defendants" or "Entity Defendants") is a Washington limited liability company
28 registered to do business in California with its principal business office in California located at

1 1267 Willis Street, Suite 200, Redding, California 96001. During all times relevant herein,
2 WOLF possessed and exerted control over Plaintiff's pay and working conditions and was a
3 joint employer of Plaintiff along with ALAWAZZI and other Entity Defendants.

4 14. Defendant OMAR ALAWAZZI (hereinafter referred to as "ALAWAZZI", one
5 of the "Defendants" or one of the "Individual Defendants") is an individual and the sole
6 Managing Member of LLC. During all times relevant herein, ALAWAZZI possessed and
7 exerted decision-making power over Plaintiff's working conditions and payment of wages,
8 including but not limited to minimum wages, overtime wages, and meal and rest period
9 premiums, wages owed upon separation indemnification for business expenses and issuance of
10 wage statements. Plaintiff is informed and believes, and based thereon, alleges that
11 ALAWAZZI resides in San Diego County.

12 15. Defendant FREEMAN BARSOTTI (hereinafter referred to as "F. BARSOTTI",
13 one of the "Defendants" or one of the "Individual Defendants") is a Managing Member of
14 FARM FRESH TO YOU, LLC. During all times relevant herein, F. BARSOTTI possessed and
15 exerted decision-making power over Plaintiff's working conditions and payment of wages,
16 including but not limited to minimum wages, overtime wages, and meal and rest period
17 premiums, wages owed upon separation indemnification for business expenses and issuance of
18 wage statements. Plaintiff is informed and believes, and based thereon, alleges that F.
19 BARSOTTI resides in Yolo County.

20 16. Defendant THADDEUS BARSOTTI (hereinafter referred to as "T.
21 BARSOTTI", one of the "Defendants" or one of the "Individual Defendants") is a Managing
22 Member of CAPAY INCORPORATED (DBA FARM FRESH TO YOU). During all times
23 relevant herein, T. BARSOTTI possessed and exerted decision-making power over Plaintiff's
24 working conditions and payment of wages, including but not limited to minimum wages,
25 overtime wages, and meal and rest period premiums, wages owed upon separation
26 indemnification for business expenses and issuance of wage statements. Plaintiff is informed
27 and believes and based thereon alleges that T. BARSOTTI resides in Sacramento County,
28 California.

1 17. At all times mentioned herein, REYES was employed by ALAWAZZI and other
2 Entity Defendants under the supervision and/or management of ALAWAZZI and other Entity
3 Defendants' employees, agents, or representatives, in and around San Diego County. Therefore,
4 jurisdiction and venue are proper with this Court.

5 18. The true names and capacities of Defendants sued under Section 474 of the
6 California Code of Civil Procedure as DOES 1 through 20, inclusive, and each of them, are
7 unknown to Plaintiff who therefore sues these Defendants by fictitious names. Plaintiff will
8 seek to amend this Complaint to set forth the true names and capacities of the fictitiously named
9 Defendants when the true names and capacities of these fictitiously named Defendants have
10 been fully ascertained. Plaintiff is informed and believes and based thereon alleges, that each of
11 the fictitiously named Defendants are responsible in some manner for the events and
12 occurrences alleged by the Plaintiff, and that Plaintiff's damages were directly and proximately
13 caused by the conduct, acts and omissions of these Defendants.

14 **GENERAL ALLEGATIONS**

15 19. REYES was hired by Defendants in August 2020, to deliver produce to
16 residential customers. REYES, and other aggrieved employees, were non-exempt employees.
17 REYES separated employment from Defendants on November 23, 2021.

18 20. Defendants failed to provide REYES and other aggrieved employees (hereinafter
19 also referred to collectively as "Plaintiffs") a truck/vehicle to deliver the produce, failed to
20 indemnify Plaintiffs for use of their respective personal vehicles and failed to indemnify the
21 Plaintiffs for use of their personal cell phones which was required to perform their work for
22 Defendants.

23 21. Defendants intentionally chose not to pay Plaintiffs who worked as delivery
24 drivers a set amount per delivery rather than as required pursuant to California law; by the hour
25 at an hourly rate of at least the minimum wage at the time for the City of San Diego.

26 22. Defendants directed and controlled the manner and conditions of work by
27 directing the Plaintiffs. Defendants instructed the Plaintiffs where and how to deliver the
28 produce. Defendants provided Plaintiffs with manifests, which contained detailed instructions

concerning the deliveries, such as customer names, addresses, etc. Defendants also provided the Plaintiffs with “tools” to perform their duties, such as ice chests, coolers, etc.

23. REYES typically made over one hundred deliveries per shift and often over one hundred fifteen. Defendants assigned REYES various routes for the deliveries. REYES made deliveries south of Interstate 8, east of Interstate 15 and Route 125, west to the coast, including Point Loma and north to Encinitas and Carlsbad. REYES would typically work ~10 hours per shift and sometimes well over 10 hours making deliveries. In addition, REYES and other aggrieved employees would expend about an hour loading their vehicles at Entity Defendants’ San Diego distribution center for which they received no compensation.

24. Defendants failed to provide Plaintiffs with meal and rest periods. Defendants failed to pay Plaintiffs wage premiums for those missed meal and rest periods.

25. Defendants failed to provide the required worker protections such as workers compensation, unemployment insurance, disability insurance. Defendants failed to pay employer/FICA taxes (Medicare and Social Security) keeping 7.65% of gross wages paid in their corporate coffers. Defendants also failed to provide Plaintiffs with wage statements as required by Labor Code section 226.

26. Defendants provided false information to the state Franchise Tax Board and the federal Internal Revenue Service. Specifically, Defendants issued or caused to be issued a 1099 to REYES for \$33,562.17 for “Nonemployee compensation”, yet only paid him (through the money transfer application “Zelle”) \$11,703.50 (a difference of \$21,858.67) in 2020. REYES complained to ALWAZZARI about this false report. However, Defendants failed to rectify the fraudulent statements submitted to the state and federal tax authorities.

27. Defendants failed to pay REYES and other aggrieved employees all wages owed after separation as required by Labor Code sections 201 and 202.

FIRST CAUSE OF ACTION

(Minimum Wage Violations - Against All Entity Defendants)

28. REYES re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

1 29. (In violation of the Labor Code §§226.8 and 2750.5, Defendants willfully
2 misclassified their employees as independent contractors, which will be deemed incorporated
3 into this First Amended Complaint by operation of law after 65 days has run from the mailing
4 of the amended PAGA Notice letter attached herein as Exhibit 2.) Pursuant to Labor Code §
5 200, “wages” includes all amounts for labor performed by employees of every description,
6 whether the amount is fixed or ascertained by the standard of time, task, piece, commission
7 basis, or other method of calculation. Under California state law through the Minimum Wage
8 Order MW-2007, Labor Code section 1182.12 and local ordinances (including the City of San
9 Diego), every employer shall pay to each employee wages.

10 30. In addition, Labor Code § 223 states that “[w]here any statute or contract
11 requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay
12 a lower wage while purporting to pay the wage designated by statute or by contract.”

13 31. Labor Code § 216 imposes personal liability on “any person, or an agent,
14 manager, superintendent, or officer... who...[h]aving the ability to pay, willfully refuses to pay
15 wages due and payable after demand has been made.”

16 32. Plaintiff hereby requests damages for Defendants’ actions, including payment of
17 wages earned/owed, along with associated allowable premiums, penalties, interests, attorneys’
18 fees and costs. Therefore, Plaintiff is entitled to recover the required minimum wage for the
19 time periods in question, multiplied times two for all hours worked pursuant to Labor Code §
20 1194.2 as liquidated damages, plus interest pursuant to Labor Code §§ 1194, 1194.2, and Civil
21 Code § 3289 from the date payment was due pursuant to Labor Code § 204, attorney fees,
22 expenses, and costs of suit pursuant to Labor Code §§ 218.5, 218.6, 1194, 1194.3. Defendants’
23 liability for penalties pursuant to Labor Code sections 558, 558.1 and 1197.1, will give rise to a
24 separate cause of action once the procedural requirements are satisfied.

25 **SECOND CAUSE OF ACTION**

26 **(Overtime Wage Violations - Against all Entity Defendants)**

27 33. REYES re-alleges and incorporates herein by reference all paragraphs outside
28 this section as though fully set forth herein.

1 34. Pursuant to Labor Code section 200, “wages” includes all amounts for labor
2 performed by employees of every description, whether the amount is fixed or ascertained by the
3 standard time, task, piece, commission basis, or other method of calculation. Under California
4 law through Minimum Wage Order MW-2016, Minimum Wage Order MW-2019, and Labor
5 Code section 1182.12, every employer with 25 employees or less shall pay each employee
6 wages not less than \$10.00 per hour beginning January 1, 2017; not less than \$10.50 per hour
7 beginning January 1, 2018; not less than \$11.00 per hour beginning January 1, 2019; not less
8 than \$12.00 per hour beginning January 1, 2020; and not less than \$13.00 per hour beginning
9 January 1, 2020. Pursuant to San Diego Municipal Code Chapter 3, Article 9, Division 1,
10 section 39.0101, every employer must pay each employee who works in the geographic
11 boundaries of the City of San Diego, minimum wage rates not less than \$10.50 per hour
12 beginning July 11, 2016; not less than \$11.50 per hour beginning January 1, 2017; not less than
13 \$12.00 per hour beginning January 1, 2019; and not less than \$13.00 per hour beginning
14 January 1, 2020. Pursuant to Labor Code section 1197, payment of a wage less than the
15 minimum wage as delineated by the commission is unlawful. Pursuant to Labor Code sections
16 98, 204, 218.5, 218.6, 1194, an employee has a right to recover all unpaid wages from an
17 employer.

18 35. Pursuant to the applicable IWC Wage Order 4-2001, section 3(A) and Labor
19 Code sections 200, 500, 510, and 1198, Defendants were required to compensate REYES for all
20 overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours
21 worked in excess of eight (8) hours in one workday and forty (40) hours in any one workweek,
22 and for the first eight (8) hours on the seventh consecutive workday in any one workweek; with
23 double (2) time after eight (8) hours on the seventh day of any workweek, or after twelve (12)
24 hours in any workday.

25 36. Based on REYES’s daily duties being virtually all non-exempt duties, REYES
26 was a non-exempt employee entitled to the protections of the IWC Wage Order sections and
27 Labor Code sections identified above. For the relevant claim periods for REYES, Defendants
28 failed to compensate REYES with overtime pay and rates for overtime hours worked as

1 required by the aforementioned labor regulations.

2 37. Accordingly, pursuant to Labor Code sections 201-204, 210, 218.6, 226, 510,
3 558, 1194, 1194.2, Civil Code section 3289, and the IWC Wage Orders, REYES, is entitled to
4 recover: penalties, the unpaid balance of hourly pay owed, overtime compensation, interest,
5 penalties, attorneys' fees, and costs of suit. Defendants are further subject to criminal penalties
6 pursuant to Labor Code sections 215 and 1199.

7 38. Individual Defendants and DOES 1-100 as owners, directors, officers, and
8 managing agents of Entity Defendants, and DOES 1-100 were employers or other persons
9 acting on behalf of Entity Defendants, who violated or caused to be violated the Labor Code
10 statutes and IWC Wage Order regulations as alleged above. Accordingly, all Defendants
11 including, but not limited to, Individual Defendants, and DOES 1-100 are individually and
12 personally liable along with Entity Defendants and DOES 1-100 for all of the above described
13 violations pursuant to Labor Code sections 216, 558, 558.1, and 1197.1 for all civil penalties,
14 interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues in the
15 Eighth Cause of action on behalf of the State of California and all other aggrieved employees.

16 **THIRD CAUSE OF ACTION**

17 **(Meal Period Violations – Against all Entity Defendants)**

18 39. REYES re-alleges and incorporates herein by reference all paragraphs outside
19 this section as though fully set forth herein.

20 40. Pursuant to California Labor Code sections 226.7 and 512, and IWC Wage Order
21 4-2001, section 11, duty-free meal periods of no less than 30 minutes are required for all non-
22 exempt employees who work more than five (5) hours in a work period per workday, except
23 that if the employee's total work period per workday is no more than six (6) hours, the meal
24 period may be waived by mutual consent of the employer and employee. An employer may not
25 employ an employee for a work period of more than 10 hours per workday without providing
26 the employee with a second meal period of not less than 30 minutes, except that if the total
27 hours worked is no more than 12 hours, the second meal period may be waived by mutual
28 consent of the employer and the employee, but only if the first meal period was not waived.

1 Time records of meal breaks must be kept except that meal periods during which operations
2 cease need not be recorded. However, an employer who fails to provide duty-free meal periods
3 must pay the employee an additional one (1) hour of regular pay for each workday in which a
4 required duty-free meal period is not provided.

5 41. Based on REYES's daily duties being virtually all non-exempt duties, REYES
6 was a non-exempt employee entitled to the protections of the IWC Wage Order sections and
7 Labor Code sections identified above. Defendants, and all of them, failed to provide REYES
8 duty-free meal periods during work periods lasting more than five (5) hours; and failed to
9 record meal periods.

10 42. Accordingly, REYES is entitled to recover damages, interest, penalties,
11 attorneys' fees, and costs available pursuant to Labor Code sections 226.7 and 512, Civil Code
12 section 3289, and the IWC Wage Orders. Defendants are further subject to criminal penalties
13 pursuant to Labor Code sections 215 and 1199.

14 43. Individual Defendants as owners, directors, officers, and managing agents of Entity
15 Defendants, and DOES 1-100 were employers or other persons acting on behalf of Entity
16 Defendants and DOES 1-100, who violated or caused to be violated the Labor Code statutes and
17 IWC Wage Order regulations as alleged above. Accordingly, all Individual Defendants
18 including, but not limited to, ALLAZZAWI, F. BARSOTTI and T. BARSOTTI and DOES 1-
19 100 are individually and personally liable along with Entity Defendants and DOES 1-100 for all
20 the above-described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all
21 civil penalties, interest, attorney fees, costs, and other recoverable remedies which Plaintiff
22 pursue in the Eighth Cause of Action on behalf of the State of California and all other aggrieved
23 employees.

24 **FOURTH CAUSE OF ACTION**

25 **(Rest Period Violations – Against All Entity Defendants)**

26 44. REYES re-alleges and incorporates herein by reference all paragraphs outside
27 this section as though fully set forth herein.

28 45. Pursuant to California Labor Code section 226.7 and IWC Order 4-2001,

1 section 12, employers must also provide non-exempt employees a paid 10-minute duty-free rest
2 period for every four (4) hours worked. Rest periods need not be recorded. An employer who
3 fails to provide duty-free rest periods must pay the employee an additional one (1) hour of
4 regular pay for each workday in which a duty-free rest period is not provided.

5 46. Defendants failed to provide REYES paid duty-free rest periods for every (4)
6 hour hours worked in a workday because Defendants had a policy and practice of not providing
7 Plaintiffs 10-minute rest periods by never even informing Plaintiffs that they even had a right to
8 take such breaks. Defendants also did not pay REYES missed rest period wage premiums.

9 47. At all times mentioned herein, Defendants violated Labor Code section 226.7
10 and IWC Wage Orders section 12 by failing to allow REYES to take uninterrupted rest periods
11 and failing to pay an additional hour of wages for each workday with a missed rest period.

12 48. Accordingly, REYES is entitled to recover damages, interest, penalties,
13 attorneys' fees, and costs available pursuant to Labor Code sections 226.7, Civil Code section
14 3289, and the IWC Orders. Defendants are further subject to criminal penalties pursuant to
15 Labor Code sections 215 and 1199.

16 49. Individual Defendants as owners, directors, officers, and managing agents of Entity
17 Defendants, and DOES 1-100 were employers or other persons acting on behalf of Entity
18 Defendants and DOES 1-100, who violated or caused to be violated the Labor Code statutes
19 and IWC Wage Order regulations as alleged above. Accordingly, all Defendants including, but
20 not limited to, ALLAZZAWI, F. BARSOTTI and T. BARSOTTI and DOES 1-100 are
21 individually and personally liable along with Entity Defendants and DOES 1-100 for all of the
22 above described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil
23 penalties, interest, attorney fees, costs, and other recoverable remedies which Plaintiff intends
24 to pursue in the Eighth Cause of Action on behalf of the State of California and all other
25 aggrieved employees.

26 **FIFTH CAUSE OF ACTION**

27 **(Records Violations -Against All Entity Defendants)**

28 50. REYES re-alleges and incorporates herein by reference all paragraphs outside

1 this section as though fully set forth herein.

2 51. Labor Code section 1174(d), states that employers have the following duties:
3 “Keep, at a central location in the state or at the plants or establishments at which employees are
4 employed, payroll records showing the hours worked daily by and the wages paid to, and the
5 number of piece-rate units earned by and any applicable piece rate paid to, employees employed
6 at the respective plants or establishments. These records shall be kept in accordance with rules
7 established for this purpose by the commission, but in any case, shall be kept on file for not less
8 than three years.”

9 52. Labor Code section 1174.5 provides, in pertinent part, as follows: “Any person
10 employing labor who willfully fails to maintain the records required by subdivision... (d) of
11 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

12 53. LLC intentionally falsified, manipulated and altered time records of REYES and
13 other aggrieved employees resulting in records which showed less hours than those actually
14 worked by REYES and other aggrieved employees, for which a civil penalty of \$500 should be
15 assessed against Defendant.

16 54. Labor Code section 226(a) states in pertinent part, as follows: “[a]n employer,
17 semimonthly or at the time of each payment of wages, shall furnish to his or her employee ... an
18 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked
19 by the employee ..., (5) net wages earned ..., and (9) all applicable hourly rates in effect during
20 the pay period and the corresponding number of hours worked at each hourly rate by the
21 employee...” Labor Code section 226 also requires employers to keep a copy of the wage
22 statements. Labor Code section 246 requires employers to include the amount of paid sick
23 leave available in the wage statement or in a separate writing on pay dates.

24 55. Defendants failed to provide REYES compliant wage statements at the time
25 wages were paid or semimonthly. The wage statements Defendants provided to REYES were
26 inaccurate and incomplete due to Defendants’ unlawful policies and practices including, but not
27 limited to, not paying all earned wages for all hours worked at the applicable hourly rates such
28 as minimum wage or overtime rates, not tracking and paying all hours worked, and not

1 indicating gross earned wages among other inadequacies.

2 56. As a result, pursuant to Labor Code section 226(e)(1), REYES is entitled to
3 recover from Defendants, “the greater of all actual damages or fifty dollars (\$50) for the initial
4 pay period in which a violation occurs and one hundred dollars (\$100) per employee for each
5 violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand
6 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.”

7 57. Individual Defendants and DOES 1-100 as owners, directors, officers, and
8 managing agents of Entity Defendants, and DOES 1-100 were employers or other persons
9 acting on behalf of Entity Defendants, who violated or caused to be violated the Labor Code
10 statutes and IWC Wage Order regulations as alleged above. Accordingly, all Defendants
11 including, but not limited to, ALAWAZZI, F.BARSOTTI, T. BARSOTTI, and DOES 1-100
12 are individually and personally liable along with Entity Defendants and DOES 1-100 for all of
13 the above described violations pursuant to Labor Code sections 216, 558, 558.1, and 1197.1 for
14 all civil penalties, interest, attorney fees, costs, and other recoverable remedies which Plaintiff
15 pursues in the Eighth Cause of Action on behalf of the State of California and all other
16 aggrieved employees.

17 **SIXTH CAUSE OF ACTION**

18 **(Waiting Time Penalties –Against all Entity Defendants)**

19 58. REYES re-alleges and incorporates herein by reference all paragraphs outside
20 this section as though fully set forth herein.

21 59. Pursuant to Labor Code section 203 (a), “[i]f an employer willfully fails to pay
22 any wages of an employee who is discharged or who quits, the wages of the employee shall
23 continue as a penalty from the due date thereof at the same rate until paid or until an action
24 therefor is commenced; but the wages shall not continue for more than 30 days.” Labor Code
25 section 201 requires that, “[i]f an employer discharges an employee, the wages earned and
26 unpaid at the time of discharge are due and payable immediately.”

27 60. Within 72 hours of REYES’ resignation, Defendants were obligated to pay
28 REYES all earned and unpaid wages described throughout this pleading. Defendants did not

1 pay REYES all of the earned unpaid wages described throughout this pleading. Defendants
2 continue to fail to pay these earned unpaid wages to Plaintiff, and other aggrieved employees.

3 61. Defendants committed the acts stated herein knowingly and willfully, thus
4 REYES is entitled to 30 days of additional daily wages as a waiting time penalty as provided by
5 Labor Code sections 201, 202, 203, and 558.1, which Defendants also have not paid to REYES
6 yet.

7 62. Individual Defendants (ALLAZZAWI, F. BARSOTTI and T. BARSOTTI) and
8 DOES 1-100 as owners, directors, officers, and managing agents of Entity Defendants, and
9 DOES 1-100 were employers or other persons acting on behalf of Entity Defendants and DOES
10 1-100, who violated or caused to be violated the Labor Code statutes and IWC Order
11 regulations as alleged above. Accordingly, all Defendants including, but not limited to,
12 Individual Defendants and DOES 1-100 are individually and personally liable along with Entity
13 Defendants and DOES 1-100 for all of the above described violations pursuant to Labor Code
14 sections 216, 558, 558.1, and 1197.1 for all civil penalties, interest, attorney fees, costs, and
15 other recoverable remedies which Plaintiff pursues in the Eighth Cause of Action on behalf of
16 the State of California and all other aggrieved employees.

17 **SEVENTH CAUSE OF ACTION**

18 **(Unfair Business Practices –Against all Entity Defendants)**

19 63. REYES re-alleges and incorporates herein by reference all paragraphs outside
20 this section as though fully set forth herein.

21 64. The acts, omissions, and practices of Defendants as alleged throughout this
22 Complaint for violations of the Labor Code constitute unlawful and unfair business acts and
23 practices within the meaning of sections 17200, et seq. of the California Business & Professions
24 Code.

25 65. REYES is informed and believes Defendants have engaged in “unlawful”
26 business acts and practices with all Plaintiffs, including REYES, through Defendants’ policies
27 and practices of failure to pay at least minimum wage for all hours worked, failure to pay
28 overtime at applicable rates, failure to pay wages timely, failure to provide meal and rest

1 periods, failure to pay a one hour wage premium for each workday with a missed meal period
2 and for each workday with a missed rest period, failure to indemnify business expenses, failure
3 to provide compliant wage statements and keep records, failure to pay all earned unpaid wages
4 due when employment ends, and failure to pay accrued waiting time penalties, etc. These
5 failures are all in violation of the statutes and regulations referenced throughout this Complaint.

6 ///

7 66. Defendants' "unfair" business acts and practices, alleged above, caused harm to
8 Plaintiffs which outweighs the utility of such conduct. Such conduct offends public policy, is
9 unethical and dishonest, caused and continues to cause substantial injury to Plaintiffs, and
10 provides Defendants with an unfair competitive advantage over those employers that abide by
11 the law, properly pay earned wages at the required minimum rates timely, properly provide
12 required meal and rest periods or pay wage premiums in lieu thereof, properly provide
13 compliant wage statements, and properly indemnify employees for all necessary expenditures
14 and losses incurred during the course of employment.

15 67. As a result of the conduct described above, Defendants have been and will be
16 unjustly enriched at the expense of Plaintiffs whom Defendants employed. Specifically,
17 Defendants have been unjustly enriched by the retention of a significant sum of dollars in wages
18 earned and wrongfully withheld from Plaintiffs.

19 68. Pursuant to section 17203 of the California Business & Professions Code,
20 REYES requests that this Court order Defendants to disgorge all ill-gotten gains and award
21 Plaintiffs full restitution of all monies wrongfully acquired by Defendants by such "unfair"
22 business act and practices as outlined herein above, plus interest and attorneys' fees pursuant to,
23 *inter alia*, section 1021.5 of the California Code of Civil Procedure. REYES additionally
24 request that such funds be impounded by the Court or that an asset freeze or constructive trust
25 be imposed upon such revenues and profits to avoid dissipation or fraudulent transfers or
26 concealment of such monies by Defendants. Plaintiffs may be irreparably harmed or denied an
27 effective and complete remedy if such an order is not granted.

28 69. Pursuant to section 17203 of the California Business & Professions Code,

1 REYES further seeks an order of this Court for equitable or injunctive relief in the form of
2 requiring Defendants to correct their unfair business acts and practices by way of properly
3 paying all earned wages timely; providing meal and rest periods when required by law; paying
4 one hour of additional wages as a premium for every workday with an unlawfully missed meal
5 period and every workday with a missed rest period; and indemnifying all business expenses
6 incurred by employees for all of Defendants employees going forward.

7 70. Accordingly, Plaintiff seeks injunctive relief, restitution, damages, interest,
8 penalties, attorney fees, and costs available pursuant to the Labor Code, Business & Professions
9 Code, and IWC Orders.

10 **EIGHTH CAUSE OF ACTION**

11 **(Labor Code § 2699 Claims Against All Defendants)**

12 71. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
13 this section as though fully set forth herein.

14 72. On January 27, 2022, pursuant to Labor Code sections 2699 (a) and 2699.3,
15 Plaintiff provided notice, on behalf of other aggrieved employees and the State of California in
16 writing, by electronic submission, to the California Labor Workforce Development Agency
17 ("LWDA") and, by certified mail and regular mail, to Defendants, that Plaintiff intended to
18 assert PAGA claims pursuant to section 2699 (a) on his own behalf, and in a representative
19 capacity on behalf of the State of California and other current or former aggrieved employees
20 (also referred to throughout this pleading as "Plaintiffs"), for Defendants' violations of specified
21 provisions of the California Labor Code. A true and correct copy of the notice is attached hereto
22 as Exhibit "1" and thereby incorporated by reference herein.

23 73. The LWDA failed to respond to REYES' notice within the statutory period of
24 sixty-five (65) days from the electronic submission date of January 27, 2022, and, as a result,
25 Plaintiff has perfected his right to sue Defendants, and each of them, in a civil action, on behalf
26 of other aggrieved employees and the state of California LWDA ("Plaintiffs") to collect
27 statutory penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1).

28 74. As a result of the acts alleged above, Plaintiffs seek penalties pursuant to

1 California Labor Code section 2699 for Defendants' violations of the enumerated Labor Code
2 sections alleged in throughout this pleading including, but not limited to sections 201, 202, 203,
3 203.1, 204, 206, 206.5, 210, 216, 218.5, 218.6, 223, 226, 226.3, 226.6, 226.7, 510, 512, 552,
4 558, 558.1, 1174, 1174.5, 1175, 1194, 1197.1, 1198, 1198.5, 1199 and 2751. (Labor Code §§
5 226.8 and 2750.5 will be incorporated herein by operation of law 65 days after the mailing of
6 the amended PAGA Notice Letter attached herein as Exhibit 2.)

7 75. Labor Code section 558 states that, "[a]ny employer or other person acting on
8 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
9 provision regulating hours and days of work in any order of the Industrial Welfare Commission
10 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
11 each underpaid employee for each pay period for which the employee was underpaid in addition
12 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
13 hundred dollars (\$100) for each underpaid employee for each pay period for which the
14 employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3)
15 Wages recovered pursuant to this section shall be paid to the affected employee." The Section
16 further states that "[t]he civil penalties provided for in this section are in addition to any other
17 civil or criminal penalty provided by law."

18 76. Labor Code section 558.1 (a) also states that, "[a]ny employer or other person
19 acting on behalf of an employer, who violates, or causes to be violated, any provision regulating
20 minimum wages or hours and days of work in any order of the Industrial Welfare Commission,
21 or violates, or causes to be violated, sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
22 held liable as the employer for such violation."

23 77. Individual Defendants were employees and/or persons acting on behalf of Entity
24 Defendants, or caused to be violated, Labor Code Sections and Wage Orders including, but not
25 limited to, those requiring timely payment of all wages owed, payment of minimum wages for
26 all hours worked, payment of overtime, payment of wages due at the time of separation,
27 delivery of the required wage statements, production of documents requested, and maintenance
28 of time records, alleged herein.

1 78. Accordingly, Plaintiff, on his own behalf, other aggrieved employees, and the
2 state of California (specifically, the California Labor & Workforce Development Agency, aka
3 the "LWDA") are entitled to personally recover against Defendants, and all of them, such
4 penalties as set forth in Labor Code section 558, 558.1 , as delineated above, and for amounts
5 owed under Labor Code sections 203, 203.1, 226, 226.3, 226.6, 226.7, 1194, and 2802, alleged
6 herein, pursuant to Labor Code section 558.1. (Labor Code §§ 226.8 and 2750.5 will be
7 incorporated herein by operation of law 65 days after the mailing of the amended PAGA Notice
8 Letter attached herein as Exhibit 2.)

9 79. It should also be noted that Labor Code section 1197.1 specifically states, in
10 part, as follows: "Any employer or other person acting either individually or as an officer, agent,
11 or employee of another person, who pays or causes to be paid to any employee a wage less than
12 the minimum fixed by an order of the commission shall be subject to a civil penalty and
13 restitution of wages payable to the employee, as follows: (1) For any initial violation that is
14 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
15 period for which the employee is underpaid. This amount shall be in addition to an amount
16 sufficient to recover underpaid wages. (2) For each subsequent violation for the same specific
17 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
18 which the employee is underpaid regardless of whether the initial violation is intentionally
19 committed. This amount shall be in addition to an amount sufficient to recover underpaid
20 wages..." REYES was a person acting individually or as an officer, agent, or employee of an
21 entity Defendant who caused the Plaintiff and other aggrieved employees to be paid less than
22 the statutorily required minimum wage as described in this First Amended Complaint.
23 Accordingly, she is subject to individual liability pursuant to Labor Code section 1197.1. The
24 same holds true pursuant to Labor Code section 558, as described above.

25 80. Pursuant to California Labor Code section 2699, Plaintiff and other aggrieved
26 employees are entitled to be awarded twenty-five percent (25%) of all penalties referenced
27 herein and due under California law, in addition to interest, attorneys' fees, and costs.

28 81. The Court shall award seventy-five percent (75%) of all penalties referenced

herein and due under California law to the State of California.

82. Plaintiff, on his own behalf and other aggrieved employees and the State of California, therefore seeks to recover from Defendants, and each of them, allowable PAGA penalties, costs, attorneys' fees, and interest, in an amount according to proof at time of trial, in accordance with Labor Code sections 2699, et seq., and related statutes.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount exceeding \$25,000 as follows:

1. For statutory penalties in an amount to be proven at trial.
2. For all unpaid wages (minimum wage, overtime, premiums, etc.) in an amount to be proven at trial.
3. For all un-indemnified business-related expenses.
4. For liquidated damages in an amount to be proven at trial.
5. For penalties in an amount to be proven at trial.
6. For attorney fees in an amount to be determined post trial pursuant to Labor Code §§ 218.5, 226, 1194, 2802, 2699.
7. For costs of suit in an amount to be determined proven post trial.
8. For pre and post judgment interest.
9. For restitution, reinstatement, injunctive relief and declaratory relief
10. For such other and further and relief as the court may deem just and proper.

Date:  2022

Respectfully submitted by,

LAW OFFICES OF THOMAS M. DIACHENKO, APC

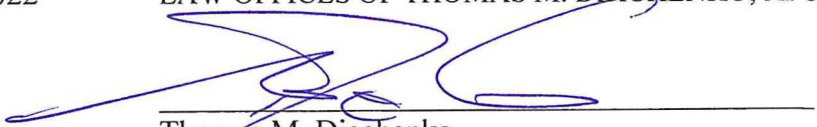

Thomas M. Diachenko
Attorney for Plaintiff GUSTAVO GAYOT REYES

EXHIBIT 1

LAW OFFICES OF
✧ **THOMAS M. DIACHENKO, APC**

Practice Areas Include:
**Wage, Employment, Personal
Injury & Business Litigation**

E-mail: Thom@DiachenkoLaw.com

January 25, 2022

1916 Third Avenue
San Diego, California 92101
Tel: (619) 699-5870
Fax: (619) 699-5871

Refer to File No.:
082020-09102021

Sent via electronic mail to:

**PAGA Administrator
David M. Lanier
PAGAfilings@dir.ca.gov**

***Re: ALAZZAWI INSTALLATIONS LLC, a California limited liability company;
OMAR ALAZZAWI, an individual; FARM FRESH TO YOU, LLC, a Delaware
limited liability company; CAPAY INCORPORATED (dba FARM FRESH TO
YOU); THE WOLF LOGISTIC, LLC, a Washington limited liability
corporation; FREEMAN BARSOTTI, an individual; THADDEUS BARSOTTI,
an individual; and DOES 1-100, inclusive***

Dear Mr. Lanier:

I represent Gustavo Gayot Reyes ("Plaintiff" or "REYES"), individually and on behalf of all other aggrieved employees. Plaintiff and the other aggrieved employees are collectively referred to hereinafter as "PAGA Plaintiffs", "Plaintiffs" or "Plaintiff and other aggrieved employees"). REYES is a former employee of ALAZZAWI INSTALLATIONS LLC ("LLC"), FARM FRESH TO YOU, LLC ("FARM FRESH"), CAPAY INCORPORATED (dba FARM FRESH TO YOU) ("CAPAY") and THE WOLF LOGISTIC, LLC ("WOLF") (sometimes collectively referred to as "Entity Defendants") but was misclassified as an independent contractor and paid a set delivery amount regardless of the amount of hours suffered or permitted to work, as were other aggrieved employees. Omar Alazzawi ("Alazzawi"), Freeman Barsotti ("F. Barsotti") and Thaddeus Barsotti ("T. Barsotti") (sometimes collectively referred to as "Defendants") in their various executive capacities carried out and/or ratified Entity Defendants' illegal employment practices.

Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendants' various Labor Code violations and of our intent to recover statutory penalties under the Labor Code's Private Attorney General Act of 2004. Payment will be submitted concurrently with this letter through the LWDA/PAGA portal: (<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>).

The following information is based upon best information and belief available at the time of this writing.

INVOLVED ENTITIES AND INDIVIDUALS

Defendant ALAWAZZI INSTALLATIONS LLC (hereinafter also referred to as "LLC" or one of the "Defendants" or "Entity Defendants") is a California limited liability company with its principal place of business located at 1652 Hilton Head Court, Suite 190, El Cajon, California 92019, and during all times mentioned herein was doing business in the State of California in and around the County of San Diego. At all times relevant herein, LLC possessed and exerted control over Plaintiff's pay and working conditions.

Defendant FARM FRESH TO YOU, LLC (hereinafter also referred to as "FARM FRESH" or one of the "Defendants" or "Entity Defendants") is a Delaware limited liability company doing business in California with its principal business office in California located at 3880 Seaport Boulevard, West Sacramento, California 95691. During all times relevant herein, FARM FRESH possessed and exerted control over Plaintiff's pay and working conditions and was a joint employer of Plaintiff along with ALAWAZZI and other Entity Defendants.

Defendant CAPAY FARMS INCORPORATED (dba FARM FRESH TO YOU) (hereinafter also referred to as "CAPAY" or one of the "Defendants" or "Entity Defendants") is a California corporation with its principal "business" office in California located at 23820 State Highway 16, Capay, California 95691. CAPAY claims a principal "executive" office in 3880 Seaport Boulevard, West Sacramento, California 95691. During all times relevant herein, CAPAY possessed and exerted control over Plaintiff's pay and working conditions and was a joint employer of Plaintiff along with ALAWAZZI and other Entity Defendants.

Defendant THE WOLF LOGISTIC LLC. (hereinafter referred to as "WOLF" or one of the "Defendants" or "Entity Defendants") is a Washington limited liability company registered to do business in California with its principal business office in California located at 1267 Willis Street, Suite 200, Redding, California 96001. During all times relevant herein, WOLF possessed and exerted control over Plaintiff's pay and working conditions and was a joint employer of Plaintiff along with ALAWAZZI and other Entity Defendants.

Defendant OMAR ALAWAZZI (hereinafter referred to as "ALAWAZZI" or one of the "Defendants") is an individual and the sole Managing Member of LLC. During all times relevant herein, ALAWAZZI possessed and exerted decision-making power over Plaintiff's working conditions and payment of wages, including but not limited to the decision not to pay minimum wages, overtime wages, and meal and rest period premiums, wages owed upon separation for business expenses and issuance of wage statements. Plaintiff is informed and believes, and based thereon alleges that ALAWAZZI resides in San Diego County.

Defendant FREEMAN BARSOTTI (hereinafter referred to as "F. BARSOTTI" or one of the "Defendants") is a Managing Member of FARM FRESH TO YOU, LLC. During all times relevant herein, F. BARSOTTI possessed and exerted decision-making power over Plaintiff's working conditions and payment of wages, including but not limited to the decision not to pay

minimum wages, overtime wages, and meal and rest period premiums, wages owed upon separation for business expenses and issuance of wage statements. Plaintiff is informed and believes, and based thereon alleges that F. BARSOTTI resides in Yolo County.

Defendant THADDEUS BARSOTTI (hereinafter referred to as “T. BARSOTTI” or one of the “Defendants”) is a Managing Member of CAPAY INCORPORATED (DBA FARM FRESH TO YOU). During all times relevant herein, T. BARSOTTI possessed and exerted decision-making power over Plaintiff’s working conditions and payment of wages, including but not limited to the decision not to pay minimum wages, overtime wages, and meal and rest period premiums, wages owed upon separation for business expenses and issuance of wage statements. Plaintiff is informed and believes and based thereon alleges that T. BARSOTTI resides in Sacramento County, California.

GENERAL ALLEGATIONS

REYES was hired by Defendants in August 2020, to deliver produce to residential customers. REYES, and other aggrieved employees, were non-exempt employees. REYES separated employment from Defendants on November 23, 2021.

Defendants failed to provide REYES and other aggrieved employees (hereinafter also referred to collectively as “Plaintiffs”) a truck/vehicle to deliver the produce, failed to indemnify Plaintiffs for use of their respective personal vehicles and failed to indemnify the Plaintiffs for use of their personal cell phones which were required to perform their work for Defendants.

Defendants intentionally chose not to pay Plaintiffs who worked as delivery drivers a set amount per delivery rather than as required pursuant to California law; by the hour at an hourly rate of at least the minimum wage at the time for the City of San Diego.

Defendants directed and controlled the manner and conditions of work by directing the Plaintiffs. Defendants instructed the Plaintiffs where and how to deliver the produce. Defendants provided Plaintiffs with manifests, which contained detailed instructions concerning the deliveries, such as customer names, addresses, etc. Defendants also provided the Plaintiffs with “tools” to perform their duties, such as ice chests, coolers, etc.

REYES typically made over one hundred deliveries per shift and often over one hundred fifteen. Defendants assigned REYES various routes for the deliveries. REYES made deliveries south of Interstate 8, east of Interstate 15 and Route 125, west to the coast, including Point Loma and north to Encinitas and Carlsbad. REYES would typically work ~10 hours per shift and sometimes well over 10 hours making deliveries. In addition, REYES and other aggrieved employees would expend about an hour loading their vehicles at Entity Defendants’ San Diego distribution center for which they received no compensation.

Defendants failed to provide Plaintiffs with meal and rest periods. Defendants failed to pay Plaintiffs wage premiums for those missed meal and rest periods.

Defendants failed to provide the required worker protections such as workers compensation, unemployment insurance, disability insurance. Defendants failed to pay employer/FICA taxes (Medicare and Social Security) keeping 7.65% of gross wages paid in their corporate coffers. Defendants also failed to provide Plaintiffs with wage statements as required by Labor Code section 226.

Defendants provided false information to the state Franchise Tax Board and the federal Internal Revenue Service. Specifically, Defendants issued or caused to be issued a 1099 to REYES for \$33,562.17 for "Nonemployee compensation", yet only paid him (through the money transfer application "Zelle") \$11,703.50 (a difference of \$21,858.67) in 2020. REYES complained to ALWAZZARI about this false report. However, Defendants failed to rectify the fraudulent statements submitted to the state and federal tax authorities.

Defendants failed to pay REYES and other aggrieved employees all wages owed after separation as required by Labor Code sections 201 and 202.

At all times mentioned herein, REYES was employed by ALAWAZZI and other Entity Defendants under the supervision and/or management of ALAWAZZI and other Entity Defendants' employees, agents, or representatives, in and around San Diego County. Therefore, jurisdiction and venue are proper with this Court.

STATUTORY VIOLATIONS

Failure to Pay Wages (Over time, premiums, liquidated damages, premiums, etc.):

Defendants are subject to PAGA penalties for the above described failure to pay and failure to timely pay all wages owed in violation of Labor Code sections 200, 201, 203, 203.1, 204, 210, 223, 221, 226.6, 226.7, 227, 227.3, 500, 510, 512, 1194, 1198 and 2751, subjecting Defendants the civil penalties in the amounts and frequencies as described and pursuant to Labor Code sections 558, 558.1, 226.6, 227, 203.1, 210, 1194.2, 1197.1, 1199 and 2699. Story and Berlin's personal liability lies in the plan language of these statutory provisions. For example, pursuant to Labor Code section 1199, "[e]very employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following: (a) [r]equires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission..." (Emphasis added.) Defendants can also be held personally liable pursuant to Labor Code sections 558 and 558.1 (without having to prove alter-ego) pursuant to the applicable PAGA provisions. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809.

Failure to Maintain Records

Pursuant to Labor Code Section 1174(d), Defendants have a legal obligation to "[k]eep, at a central location in the state or at the plants or establishments at which employees are

employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments."

Defendants failed to maintain records of the PAGA Plaintiff's hours worked which Defendants were required to keep pursuant to Labor Code Section 1174(d). Therefore, Defendants violated Labor Code Section 1174(d) by failing to collect and keep records indicating the daily hours worked by Plaintiffs and other aggrieved employees.

Pursuant to Labor Code Section 1174.5, "any person employing labor who willfully fails to maintain . . . accurate and complete records required by subdivision (d) of Section 1174 . . . shall be subject to a civil penalty of five hundred dollars (\$500)." Accordingly, Defendants are required to pay an additional \$500 per PAGA Plaintiff in penalties.

Failure to Provide Proper Pay Stubs (Wage Statements)

Defendants failed to provide the PAGA Plaintiffs with accurate pay stubs, or for that matter, any pay stubs. This failure was in clear dereliction of its duties as set forth in California Labor code sections 226 and 226.3 Labor Code section 226 states in part, that, "[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing, among other things, "(1) gross wages earned, (2) total hours worked by the employee..." Labor Code § 226 states in part as follows: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$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 subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law."

California Labor Code section 226.3, states in pertinent part as follows: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$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 subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law."

Defendants failed to comply with Labor Code Sections 226 and 226.3. Accordingly, Defendants are liable pursuant to Labor Code Section 226 which states that "[a]n employee suffering injury as a result of a 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 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

Personal liability for violations of section 226 can be found in Labor code section 226.6 which reads as follows: "Any employer who knowingly and intentionally violates the provisions of Section 226, or any officer, agent, employee, fiduciary, or other person who has the control, receipt, custody, or disposal of, or pays, the wages due any employee, and who knowingly and intentionally participates or aids in the violation of any provision of Section 226 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned not to exceed one year, or both, at the discretion of the court. That fine or imprisonment, or both, shall be in addition to any other penalty provided by law."

Waiting Time Penalties

Pursuant to Labor Code sections 201, 202 and 203, the PAGA Plaintiffs were entitled to all wages earned and unpaid at the time of discharge or within the time allotted by Labor Code sections 201 and 202.

Defendants failed to pay the PAGA Plaintiffs, when they terminated them ("their contracts"), all wages and sums owed at time of discharge, or within the time allowed by Labor Code sections 201 and 202, including, but not limited to, minimum wage, overtime, in accordance with Labor Code section 203. Defendants intentionally failed to pay Plaintiffs all wages owed to him at the time of his termination and that Defendants also failed to pay other aggrieved employees the wages owed to them at their time of discharge from employment as well.

As a direct result, the PAGA Plaintiffs have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law. The PAGA Plaintiffs are also entitled to waiting time penalties as provided by Labor Code §§ 201, 202, 203 and civil penalties as described in Labor Code sections 558, 558.1, 226.6, 227, 203.1, 210, 1194.2, 1197.1, 1199 and 2699.

REQUEST FOR RELIEF

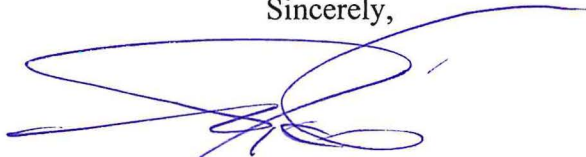
Accordingly, Plaintiff respectfully requests that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations pertaining to all aggrieved employees. If the LWDA declines to pursue enforcement, Plaintiff fully intends to pursue these claims for civil penalties on behalf of themselves and all other current and former aggrieved employees in a Superior Court action. Plaintiffs, through counsel, intend to bring this action as a representative action on behalf of other current or former aggrieved employees, for penalties pursuant to California Labor Code section 2699, et. seq., for Defendants' violations of the various enumerated Labor Code sections set forth throughout this

LAW OFFICES OF
✧ **THOMAS M. DIACHENKO, APC**
January 25, 2022
Page 7

notice letter and the associated sections which provide for civil penalties, including, but not limited to Labor Code sections 98.6, 200-204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.6, 226.7, 227, 227.3, 500, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1194, 1194.2, 1197.1, 1198, 1199, 2699 and 2751.

Should you have any questions or concerns regarding the above, please do not hesitate to contact my office. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Thomas M. Diachenko, Esq.

TMD;maj

Enclosure:
Proof of Service

Cc:See attached Service List

SERVICE LIST

Sent via certified mail and USPS to:

Allazzawi Installations LLC Attn: Omar Alazzawi 1652 Hilton Head Court, Suite 190 El Cajon, California 92019	Farm Fresh to You, LLC Attn: Freeman Barsotti 3880 Seaport Boulevard West Sacramento, California 95691
Capay Incorporated Attn: Thaddeus Barsotti 3880 Seaport Boulevard West Sacramento, California 95691	The Wolf Logistic LLC Northwest Registered Agent, Inc., Agent for Service of Process 1267 Willis Street, Suite 200 Redding, California 96001
Omar Alazzawi 1652 Hilton Head Court, Suite 190 El Cajon, California 92019	Freeman Barsotti PO Box 980610 West Sacramento, California 95798
Thaddeus Barsotti 3880 Seaport Boulevard West Sacramento, California 95691	

Via Email to:

<u>Attorney for Capay Incorporated, Freeman Barsotti and Thaddeus Barsotti</u> Meagan D. Bainbridge Katie A. Collins Weintraub Tobin Chediak Coleman Grodin Law Corporation 400 Capitol Mall, 11 th Floor Sacramento, California 95814 mbainbridge@weintraub.com kcollins@weintraub.com	<u>Attorney for The Wolf Logistic, LLC</u> Dana Douglas The Douglas Law Group 11780 Central Avenue, Suite 105 Chino, California 91710 ddouglas@thedouglaslawgroup.com
--	---

GUSTAVO GAYOT REYES

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over eighteen years of age and not a party to this action; my business address is 1916 Third Avenue, San Diego, California, 92101. My electronic Service address is Malia@Dicahenkolaw.com

On January 27, 2022, I served a true copy of the foregoing document(s):

1. CORRESPONDENCE, PAGA NOTICE LETTER

on all interested parties in this action as follows:

Allazzawi Installations LLC Attn: Omar Alazzawi 1652 Hilton Head Court, Suite 190 El Cajon, California 92019	Farm Fresh to You, LLC Attn: Freeman Barsotti PO Box 980610 West Sacramento, California 95798
PAGA Administrator (Via Email Only) David M. Lanier PAGAfilings@dir.ca.gov	Capay Incorporated Attn: Thaddeus Barsotti 3880 Seaport Boulevard West Sacramento, California 95691
The Wolf Logistic LLC Northwest Registered Agent, Inc., Agent for Service of Process 1267 Willis Street, Suite 200 Redding, California 96001	Omar Alazzawi 1652 Hilton Head Court, Suite 190 El Cajon, California 92019
Freeman Barsotti PO Box 980610 West Sacramento, California 95798	Thaddeus Barsotti 3880 Seaport Boulevard West Sacramento, California 95691
<u>Attorney for Capay Incorporated, Freeman Barsotti and Thaddeus Barsotti</u> Meagan D. Bainbridge (Via Email Only) Kate A. Collins Weintraub Tobin Chediak Coleman Grodin Law Corporation 400 Capitol Mall, 11th Floor Sacramento, California 95814 mbainbridge@weintraub.com kcollins@weintraub.com	<u>Attorney for The Wolf Logistic, LLC</u> Dana Douglas The Douglas Law Group (Via Email Only) 11780 Central Avenue, Suite 105 Chino, California 91710 ddouglas@thedouglaslawgroup.com

☒ (CERTIFIED U.S. MAIL): I caused each such envelope to be placed in the U.S. Post Office at San Diego, California. I am readily familiar

LAW OFFICES OF
THOMAS M. DIACHENKO, APC
1916 Third Avenue
San Diego, California 92101
(619) 699-5870

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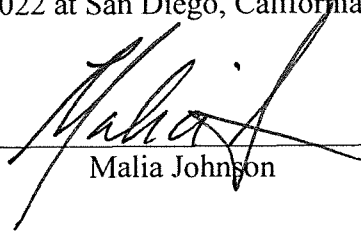
the U.S. Postal Service or other facility maintained by the U.S. Postal Service, in an envelope or package designated for use by U.S. Postal service and with delivery fees prepaid.

☒ **(U.S. MAIL):** I enclosed the documents in a sealed envelope or package addressed to the person(s) at the addresses above. I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☒ **(VIA ELECTRONIC MEANS):** I caused such document(s) to be sent by electronic means to the persons indicated in the service list attached hereto.

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

Executed on January 27, 2022 at San Diego, California.


Malia Johnson

7018 1830 0001 8697 6234

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 \$ Se: Attn: Omar Alazzawi
 \$ St: 1652 Hilton Head Court, Suite 190
 \$ Ci: El Cajon, California 92019

THOMAS M. DIACHENKO, APC
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\$ To: Freeman Barsotti
 \$ Se: PO Box 980610
 \$ St: West Sacramento, California 95798
 \$ Ci:

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☐ Adult Signature Restricted Delivery	\$

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Postage

\$ To: Thaddeus Barsotti
 \$ Se: 3880 Seaport Boulevard
 \$ St: West Sacramento, California 95691
 \$ Ci:

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

PROOF OF SERVICE

of San Diego, State of California. I am over eighteen years
 my business address is 1916 Third Avenue, San Diego,
 vice address is Malia@Dicahenkolaw.com

d a true copy of the foregoing document(s):

, PAGA NOTICE LETTER

as follows:

	Farm Fresh to You, LLC Attn: Freeman Barsotti PO Box 980610 West Sacramento, California 95798
only)	Capay Incorporated Attn: Thaddeus Barsotti 3880 Seaport Boulevard West Sacramento, California 95691
gent for	Omar Alazzawi 1652 Hilton Head Court, Suite 190 El Cajon, California 92019
	Thaddeus Barsotti 3880 Seaport Boulevard West Sacramento, California 95691
emen	<u>Attorney for The Wolf Logistic, LLC</u> Dana Douglas The Douglas Law Group (Via Email Only) 11780 Central Avenue, Suite 105 Chino, California 91710 ddouglas@thedouglaslawgroup.com
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(L): I caused each such envelope to be
 an Diego, California. I am readily familiar

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Omar Alazzawi
1652 Hilton Head Court, Suite 190
El Cajon, California 92019

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Capay Incorporated
Attn: Thaddeus Barsotti
3880 Seaport Boulevard
West Sacramento, California 95691

PS Form 3800, April 2015 PSN 7530-02-000-9047

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The Wolf Logistic LLC
Northwest Registered Agent, Inc.,
Agent for Service of Process
1267 Willis Street, Suite 200
Redding, California 96001

PS Form 3800, April 2015 PSN 7530-02-000-9047

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per facility maintained by the U.S. Postal Service,
designated for use by U.S. Postal service and with

closed the documents in a sealed envelope or
person(s) at the addresses above. I placed the
d mailing, following our ordinary business
iar with this business's practice for collecting
ence for mailing. On the same day that
collection and mailing, it is deposited in the
with the United States Postal Service, in a sealed
repaid.

C MEANS): I caused such document(s) to be
ne persons indicated in the service list attached

jury under the laws of the State of California that the

1, 2022 at San Diego, California.

Malia Johnson

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☐ Certified Mail Restricted Delivery \$
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☐ Adult Signature Restricted Delivery \$

Postmark
Here

Postage

Farm Fresh to You, LLC
Attn: Freeman Barsotti
PO Box 980610
West Sacramento, California 95798

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

PROOF OF SERVICE

San Diego, State of California. I am over eighteen years
my business address is 1916 Third Avenue, San Diego,
my address is Malia@Dicahenkolaw.com

a true copy of the foregoing document(s):

PAGA NOTICE LETTER

as follows:

10
11
12
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Alazzawi Institutions LLC Attn: Omar Alazzawi 1652 Hilton Head Court, Suite 190 El Cajon, California 92019	Farm Fresh to You, LLC Attn: Freeman Barsotti PO Box 980610 West Sacramento, California 95798
PAGA Administrator (Via Email Only) David M. Lanier PAGAFilings@dir.ca.gov	Capay Incorporated Attn: Thaddeus Barsotti 3880 Seaport Boulevard West Sacramento, California 95691
The Wolf Logistic LLC Northwest Registered Agent, Inc., Agent for Service of Process 1267 Willis Street, Suite 200 Redding, California 96001	Omar Alazzawi 1652 Hilton Head Court, Suite 190 El Cajon, California 92019
Freeman Barsotti PO Box 980610 West Sacramento, California 95798	Thaddeus Barsotti 3880 Seaport Boulevard West Sacramento, California 95691
<u>Attorney for Capay Incorporated, Freeman Barsotti and Thaddeus Barsotti</u> Meagan D. Bainbridge (Via Email Only) Kate A. Collins Weintraub Tobin Chediak Coleman Grodin Law Corporation 400 Capitol Mall, 11th Floor Sacramento, California 95814 mbainbridge@weintraub.com kcollins@weintraub.com	<u>Attorney for The Wolf Logistic, LLC</u> Dana Douglas The Douglas Law Group (Via Email Only) 11780 Central Avenue, Suite 105 Chino, California 91710 ddouglas@thedouglaslawgroup.com

☒ (CERTIFIED U.S. MAIL): I caused each such envelope to be placed in the U.S. Post Office at San Diego, California. I am readily familiar

THOMAS M. DIACHENKO, APC

1916 Third Avenue
San Diego, California 92101
(619) 699-5870

7018 1830 0001 8697 6241

THOMAS M. DIACHENKO, APC
1916 Third Avenue
San Diego, California 92101
(619) 699-5870

1 the U.S. Postal Service or other facility maintained by the U.S. Postal Service,
2 in an envelope or package designated for use by U.S. Postal service and with
3 delivery fees prepaid.

4 ☒ (U.S. MAIL): I enclosed the documents in a sealed envelope or
5 package addressed to the person(s) at the addresses above. I placed the
6 envelope for collection and mailing, following our ordinary business
7 practices. I am readily familiar with this business's practice for collecting
8 and processing correspondence for mailing. On the same day that
9 correspondence is placed for collection and mailing, it is deposited in the
10 ordinary course of business with the United States Postal Service, in a sealed
11 envelope with postage fully prepaid.

12 ☒ (VIA ELECTRONIC MEANS): I caused such document(s) to be
13 sent by electronic means to the persons indicated in the service list attached
14 hereto.

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

17 Executed on January 27, 2022 at San Diego, California.

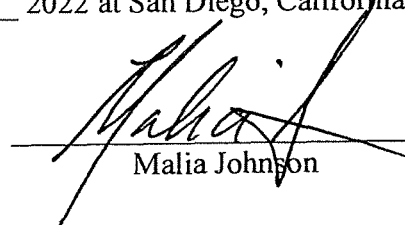
18 
19 _____
20 Malia Johnson

EXHIBIT 2

LAW OFFICES OF
✧ **THOMAS M. DIACHENKO, APC**

Practice Areas Include:
**Wage, Employment, Personal
Injury & Business Litigation**

E-mail: Thom@DiachenkoLaw.com

April 14, 2022

1916 Third Avenue
San Diego, California 92101
Tel: (619) 699-5870
Fax: (619) 699-5871

Refer to File No.:
082020-09102021

Sent via electronic mail to:

**PAGA Administrator
David M. Lanier
PAGAFilings@dir.ca.gov**

***Re: ALAZZAWI INSTALLATIONS LLC, a California limited liability company;
OMAR ALAZZAWI, an individual; FARM FRESH TO YOU, LLC, a Delaware
limited liability company; CAPAY INCORPORATED (dba FARM FRESH TO
YOU); THE WOLF LOGISTIC, LLC, a Washington limited liability
corporation; FREEMAN BARSOTTI, an individual; THADDEUS BARSOTTI,
an individual; and DOES 1-100, inclusive; LWDA Case No.: LWDA-CM-
864975-22***

Dear Mr. Lanier:

On January 27, 2022, our office submitted written notice of Defendants' various Labor Code violations and of our intent to recover statutory penalties under the Labor Code's Private Attorney General Act of 2004 on behalf of Gustavo Gayot Reyes, individually and on behalf of all other aggrieved employees.

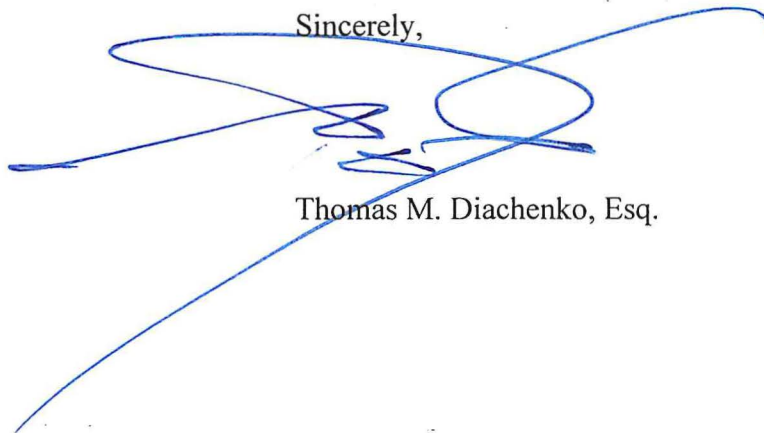
Labor Code §§ 226.8 and 2750.5 were unintentionally omitted from the Failure to Pay Wages (Over time, premiums, liquidated damages, premiums, etc.) paragraph of the Statutory Violations section of the Letter.

In violation of the Labor Code §§ 226.8 and 2750.5, Defendants willfully misclassified their employees as independent contractors, which will be deemed incorporated into the First Amended Complaint by operation of law after 65 days has run from the mailing of this amended PAGA Notice letter.

LAW OFFICES OF
✧ **THOMAS M. DIACHENKO, APC**
April 14, 2022
Page 2

Should you have any questions or concerns regarding the above, please do not hesitate to contact my office. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Thomas M. Diachenko, Esq.

TMD;maj

Enclosure:
Proof of Service

Cc:See attached Service List

SERVICE LIST

Sent via certified mail and USPS to:

Allazzawi Installations LLC Attn: Omar Alazzawi 1652 Hilton Head Court, Suite 190 El Cajon, California 92019 <u>certified mail and USPS</u>	Farm Fresh to You, LLC Attn: Freeman Barsotti P.O. Box 980610 Sacramento, California 95838 <u>certified mail and USPS</u>
Capay Incorporated Attn: Freeman Barsotti 23804 State Hwy 16 Capay, California 95607 <u>USPS only</u>	The Wolf Logistic LLC Northwest Registered Agent, Inc., Agent for Service of Process 1267 Willis Street, Suite 200 Redding, California 96001 <u>USPS only</u>
Omar Alazzawi 1652 Hilton Head Court, Suite 190 El Cajon, California 92019 <u>certified mail and USPS</u>	Freeman Barsotti 23804 State Hwy 16 Capay, California 95607 <u>USPS only</u>
Thaddeus Barsotti P.O. Box 980610 Sacramento, California 95838 <u>USPS only</u>	

Via Email to:

<u>Attorney for Capay Incorporated, Freeman Barsotti and Thaddeus Barsotti</u> Meagan D. Bainbridge Katie A. Collins Weintraub Tobin Chediak Coleman Grodin Law Corporation 400 Capitol Mall, 11 th Floor Sacramento, California 95814 mbainbridge@weintraub.com kcollins@weintraub.com	<u>Attorney for The Wolf Logistic, LLC</u> Dana Douglas The Douglas Law Group 11780 Central Avenue, Suite 105 Chino, California 91710 ddouglas@thedouglaslawgroup.com
--	---

1 **GUSTAVO GAYOT REYES**

2 **PROOF OF SERVICE**

3 I am employed in the County of San Diego, State of California. I am over eighteen years
4 of age and not a party to this action; my business address is 1916 Third Avenue, San Diego,
5 California, 92101.
6

7 On April 14, 2022, I served a true copy of the foregoing document(s):

8 **1. CORRESPONDENCE, AMENDED PAGA NOTICE LETTER**

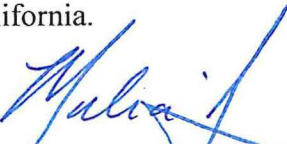
9 on all interested parties in this action on the attached service list below via:

10
11 ☒ **(CERTIFIED U.S. MAIL):** I caused each such envelope to be
12 placed in the U.S. Post Office at San Diego, California. I am readily familiar
13 with the firm's practice of collection and processing of correspondence for
14 overnight delivery. Under that practice it would be deposited directly with
15 the U.S. Postal Service or other facility maintained by the U.S. Postal Service,
16 in an envelope or package designated for use by U.S. Postal service and with
17 delivery fees prepaid.

18 ☒ **(U.S. MAIL):** I enclosed the documents in a sealed envelope or
19 package addressed to the person(s) at the addresses above. I placed the
20 envelope for collection and mailing, following our ordinary business practices.
21 I am readily familiar with this business's practice for collecting and
22 processing correspondence for mailing. On the same day that
23 correspondence is placed for collection and mailing, it is deposited in the
24 ordinary course of business with the United States Postal Service, in a sealed
25 envelope with postage fully prepaid.

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

28 Executed on April 14, 2022 at San Diego, California.



Malia Johnson

Service List:

Allazzawi Installations LLC Attn: Omar Alazzawi 1652 Hilton Head Court, Suite 190 El Cajon, California 92019 <u>certified mail and USPS</u>	Farm Fresh to You, LLC Attn: Freeman Barsotti P.O. Box 980610 Sacramento, California 95838 <u>certified mail and USPS</u>
Capay Incorporated Attn: Freeman Barsotti 23804 State Hwy 16 Capay, California 95607 <u>USPS only</u>	The Wolf Logistic LLC Northwest Registered Agent, Inc., Agent for Service of Process 1267 Willis Street, Suite 200 Redding, California 96001 <u>USPS only</u>
Omar Alazzawi 1652 Hilton Head Court, Suite 190 El Cajon, California 92019 <u>certified mail and USPS</u>	Freeman Barsotti 23804 State Hwy 16 Capay, California 95607 <u>USPS only</u>
Thaddeus Barsotti P.O. Box 980610 Sacramento, California 95838 <u>USPS only</u>	

Via Email to:

<u>Attorney for Capay Incorporated, Freeman Barsotti and Thaddeus Barsotti</u> Meagan D. Bainbridge Katie A. Collins Weintraub Tobin Chediak Coleman Grodin Law Corporation 400 Capitol Mall, 11 th Floor Sacramento, California 95814 mbainbridge@weintraub.com kcollins@weintraub.com	<u>Attorney for The Wolf Logistic, LLC</u> Dana Douglas The Douglas Law Group 11780 Central Avenue, Suite 105 Chino, California 91710 ddouglas@thedouglaslawgroup.com
<u>PAGA ADMINISTRATOR</u> David M. Lanier PAGAFilings@dir.ca.gov	

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☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$

Postage \$

Total \$

Sent \$

Street \$

City, \$

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PROOF OF SERVICE

of San Diego, State of California. I am over eighteen years

my business address is 1916 Third Avenue, San Diego,

true copy of the foregoing document(s):

I. CORRESPONDENCE, AMENDED PAGA NOTICE LETTER

parties in this action on the attached service list below via:

(MAIL): I caused each such envelope to be
e at San Diego, California. I am readily familiar
collection and processing of correspondence for
that practice it would be deposited directly with
ther facility maintained by the U.S. Postal Service,
designated for use by U.S. Postal service and with

enclosed the documents in a sealed envelope or
ne person(s) at the addresses above. I placed the
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with this business's practice for collecting and
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under the laws of the State of California that the

San Diego, California.

Malia Johnson

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☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$

Postage \$

Total \$

Sent \$

Street \$

City, \$

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20

envelope with

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☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$

Postage \$

Total \$

Sent \$

Street \$

City, \$

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions