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8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN JOAQUIN**

11 **GUILLERMINA LEDEZMA**, individually
12 and on behalf of other persons similarly
13 situated,

14 Plaintiff,

15 vs.

16 **VAN GRONINGEN & SONS, INC.**, a
California corporation; and **DOES 1-50**,
17 inclusive,

18 Defendants.
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Case No.:

CLASS ACTION

COMPLAINT FOR DAMAGES:

1. FAILURE TO PROVIDE MEAL PERIODS
2. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
3. FAILURE TO PAY ALL WAGES DUE AND OWING ON SEPARATION
4. UNFAIR BUSINESS PRACTICES [Cal. Bus. & Prof. Code §§ 17200]

DEMAND FOR JURY TRIAL

COMPLAINT

FILED
SUPERIOR COURT
2022 FEB 28 PM 12:04
BRANDON E. RILEY, CLERK
BY *[Signature]* DEPUTY

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STK-CV- WE -2022- 1518

FILE BY FAX

1 Plaintiff GUILLERMINA LEDEZMA ("Plaintiff"), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class action lawsuit brought on behalf of Plaintiff and other similarly
5 situated persons, under Code of Civil Procedure § 382, seeking remedies for missed meal
6 periods, inaccurate itemized wage statements, failure to timely pay all wages during
7 employment, waiting time penalties in the form of continuation wages for failure to timely pay
8 employees all wages, equitable relief, and reasonable attorneys' fees and costs.

9 **JURISDICTION AND VENUE**

10 2. This Court has jurisdiction over this action under Article 6 of the California
11 Constitution and California Code of Civil Procedure § 410.10.

12 3. This Court has jurisdiction over Plaintiff's and Class Members' claims for waiting
13 time penalties and meal period violations under California Labor Code § 218.

14 4. This Court has jurisdiction over Plaintiff's and the Class Members' claims for
15 restitution of unpaid wages and other ill-gotten benefits arising from Defendants' unlawful
16 and/or unfair business practices under California Business & Professions Code §§17200 *et seq.*

17 5. Venue is proper in this judicial district pursuant to California Code of Civil
18 Procedure § 395.5 because the acts alleged herein, in part, took place in San Joaquin County,
19 California.

20 **PARTIES**

21 6. Plaintiff GUILLERMINA LEDEZMA ("Plaintiff") is a resident of California.
22 Plaintiff was employed by Defendant Van Groningen & Sons, Inc. as an hourly paid non-exempt
23 employee at its location in Manteca, California, during the relevant four-year period preceding
24 the filing of this complaint.

25 7. Plaintiff appears in this action on behalf of herself and on behalf of all others
26 similarly situated.

1 8. Defendant VAN GRONINGEN & SONS, INC. ("Defendant") is a California
2 corporation with its principal place of business in Manteca, California. Defendant grows and
3 harvests produce and supplies its produce to vendors throughout California.

4 9. Plaintiff is informed and believes that DOES 1 through 50 are corporations,
5 individuals, limited liability partnerships, limited liability companies, general partnerships, sole
6 proprietorships or are other business entities or organizations of a nature not currently known to
7 Plaintiff.

8 10. Plaintiff is unaware of the true names of Defendants DOES 1 through 50.
9 Plaintiff sues said Defendants by said fictitious name and will amend this complaint when the
10 true names and capacities are ascertained or when such facts pertaining to liability are
11 ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes that each
12 of the fictitiously named Defendants is in some manner responsible for the events and allegations
13 set forth in this complaint.

14 11. All of the acts and failures to act alleged herein were duly performed by and were
15 attributable to all Defendants, each acting as a joint employer, successor, agent, employee, or
16 under the direction and control of the others, except as specifically alleged otherwise. Said acts
17 and failures to act were within the scope of such agency and/or employment, and each Defendant
18 participated in, approved and/or ratified the unlawful acts and omissions by the other Defendants
19 complained of herein. Whenever and wherever reference is made in this Complaint to any act by
20 a Defendant or Defendants, such allegations and reference shall also be deemed to mean the acts
21 and failures to act of each Defendant acting individually, jointly and/or severally.

22 12. Plaintiff makes the allegations in this complaint without any admission that, as to
23 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading, and
24 Plaintiff reserves all of Plaintiff's rights to plead in the alternative.

25 13. Defendant Van Groningen & Sons, Inc. and DOES 1-50 are collectively referred
26 to herein as "Defendants".
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1 **GENERAL FACTUAL ALLEGATIONS**

2 14. **Facts Related to Defendants' Meal Period Violations:** During the relevant
3 liability period, Defendants did not provide Plaintiff and other members of the Meal Break Class
4 with a timely meal period. For example, Plaintiff's timesheets demonstrate at least 6 instances in
5 which Plaintiff did not receive a timely meal period. That is, Plaintiff was given her meal period
6 sometime after the fifth hour of work. Based on Defendants' payroll data for Plaintiff, at no time
7 during the liability period did Defendants pay Plaintiff an additional hour of premium pay for
8 Defendants' failure to provide a timely meal period.

9 15. In addition, Plaintiff and other members of the Meal Break Class were typically
10 scheduled to work between 12 to 14 hour shifts and, therefore, regularly worked shifts which
11 lasted longer than 10 hours, entitling Plaintiff and other members of the Meal Break Class to a
12 second meal period. However, Defendants failed to provide Plaintiff and other members of the
13 Meal Break Class the second meal periods to which they were entitled.

14 16. **Facts Related to Wage Statement Violations:** At all times during the relevant
15 liability period, Plaintiff and other members of the Wage Statement Class received wage
16 statements from Defendants that did not list all wages earned, including the premium wages
17 alleged above. As the above infractions explain, Plaintiff and other members of the Wage
18 Statement Class were entitled to meal premium wages that were not paid and, therefore, are
19 entitled to penalty payments pursuant to Labor Code Section 226.

20 17. **Facts Related to Waiting Time Penalties:** At all times during the relevant
21 liability period, Plaintiff and other members of the Waiting Time Penalty Class did not receive
22 all wages owed due to Defendants' failure to pay premium wages for the meal period violations
23 alleged above. Likewise, Defendants violated Labor Code Section 203 by not paying the waiting
24 time penalties for failure to comply with Labor Code Section 201 or 202.

25 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

26 18. Plaintiff brings this action on behalf of herself, on behalf of all others similarly
27 situated, and as a member of the Classes defined as follows:
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- 1 a. Meal Break Class: All current and former non-exempt employees of Defendants
2 who work or worked in California at any time during the four years preceding
3 the filing of Plaintiff's Complaint through the date Notice is mailed to the
4 members of this Class.
- 5 b. Wage Statement Class: All members of the Meal Break Class who worked for
6 Defendants in California at any time during the one year preceding the filing of
7 Plaintiff's Complaint through the date Notice is mailed to the members of this
8 Class.
- 9 c. Waiting Time Penalty Class: All members of the Meal Break Class whose
10 employment by ended at any time during the three years preceding the filing of
11 Plaintiff's Complaint through the date Notice is mailed to the members of this
12 Class.

13 19. This action has been brought and may be properly maintained as a class action
14 pursuant to the provisions of California Code of Civil Procedure § 382 and other applicable law.

15 20. **Numerosity**: Code of Civil Procedure § 382: members of the Classes are so
16 numerous that their individual joinder is impracticable. Plaintiff estimates that there are no less
17 than 50 persons in each of the classes. The precise number of Class members and their addresses
18 are unknown to Plaintiff. However, Plaintiff is informed and believes that the number can be
19 obtained from Defendants' records. Class members may be notified of the pendency of this
20 action by mail, electronic mail, the Internet, or published notice.

21 21. **Existence of Predominance of Common Questions of Fact and Law**: Code of
22 Civil Procedure § 382: Common questions of law and fact exist as to all members of the Class.
23 These questions predominate over any questions effecting only individual members of the class.
24 These common factual and legal questions include:

- 25 (a) Whether Defendants failed to provide members of the Meal Break Class
26 timely, thirty (30) minutes uninterrupted meal breaks for each day they
27 worked more than 5 hours as contemplated by California law;
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- 1 (b) Whether Defendants violated the applicable IWC Wage Orders and Labor
2 Code Sections by failing to provide members of the Meal Break Class second
3 meal periods on shifts over ten (10) hours;
- 4 (c) Whether Defendants failed to pay meal break premiums to members of the
5 Meal Break Class for missed or late meal breaks as required by California
6 law;
- 7 (d) Whether Defendants failed to issue accurate wage statements under Labor
8 Code Section 226;
- 9 (e) Whether Defendants failed to provide class members who ceased employment
10 with Defendants all wages owed at the time of the cessation of the employee-
11 employer relationship;
- 12 (f) Whether hourly paid employees are entitled to premium wages, waiting time
13 penalties, inaccurate wage statement penalties and other relief;
- 14 (g) Whether Defendants committed unlawful business practices or acts within the
15 meaning of Business & Professions Code Sects. 17200 *et seq.*;
- 16 (h) Whether, as a consequence of Defendants' unlawful conduct, the members of
17 the Classes are entitled to restitution, and/or equitable relief;
- 18 (i) Whether Defendants' affirmative defenses, if any, raise any common issues of
19 law or fact as to Plaintiff and the class members as a whole.

20 22. **Typicality:** Plaintiff's claims are typical of the claims of the members of each
21 Class because Plaintiff, as an hourly paid non-exempt employee, was exposed to the same
22 unlawful business practices as the members of the classes. Plaintiff sustained the same types of
23 injuries and losses that the class members sustained. Plaintiff is subject to the same affirmative
24 defenses as the members of the class.

25 23. **Adequacy:** Plaintiff will adequately and fairly protect the interests of the
26 members of the Classes. Plaintiff has no interest adverse to the interests of absent Class
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1 members. Plaintiff is represented by legal counsel who has substantial class action experience in
2 civil litigation and employment law.

3 24. **Superiority:** A class action is superior to other available means for fair and
4 efficient adjudication of the claims of the Classes and would be beneficial for the parties and the
5 court. Class action treatment will allow a large number of similarly situated persons to prosecute
6 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
7 duplication of effort and expense that numerous individual actions would require. The monetary
8 amounts due to many individual Class members are likely to be relatively small, and the burden
9 and expense of individual litigation would make it difficult or impossible for individual members
10 of the Class to seek and obtain relief. A class action will serve an important public interest by
11 permitting such individuals to effectively pursue recovery of the sums owed to them. Further,
12 class litigation prevents the potential for inconsistent or contradictory judgments raised by
13 individual litigation.

14 **FIRST CAUSE OF ACTION**

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

16 **(By Plaintiff and the Meal Break Class against Defendants)**

17 25. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
18 though set forth herein.

19 26. At all relevant times, Plaintiff and the other members of the Meal Break Class
20 were employees of Defendants covered by Labor Code Sections 226.7 and 512 and the
21 applicable Wage Orders, including Wage Order 14-2001.

22 27. Pursuant to Labor Code Sections 226.7 and 512, and Section 11 of the applicable
23 Industrial Welfare Commission ("IWC") Wage Orders, including Wage Order 14-2001, Plaintiff
24 and other members of the Meal Break Class were entitled to a meal period of at least 30 minutes
25 for each workday they worked more than 5 hours in any workday and a second meal period of at
26 least 30 minutes for each workday they worked more than 10 hours. Additionally, "If an
27 employer fails to provide an employee a meal...period in accordance with a state law, ..., the
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1 employer shall pay the employee one additional hour of pay at the employee's regular rate of
2 compensation for each workday that the meal period... is not provided." Labor Code Section
3 226.7(c).

4 28. Defendants failed to provide Plaintiff and other members of the Meal Break Class
5 meal periods within the first 5 hours of their workday for each workday that they worked more
6 than 5 hours in accordance with Labor Code Sections 226.7 and 512, and Section 11 of Wage
7 Order 14-2001. Plaintiff is informed and believes and thereon alleges that during the applicable
8 limitations period, Defendants maintained and continues to maintain a policy or practice of
9 releasing its hourly employees to take their meal periods after working 5 hours in a workday and
10 preventing putative class members from taking their meal periods within the first 5 hours of the
11 workday.

12 29. As alleged above, Defendants employed Plaintiff and other members of the Meal
13 Break Class subject to Labor Code Section 226.7(c) and 512 and the applicable Wage Orders.
14 Wage Order 14-2001(11)(B) further provides that, "An employer may not employ an employee
15 for more than ten (10) hours per day without providing the employee with a second meal period
16 of not less than 30 minutes, except that if the total hours worked is no more than 12 hours the
17 second meal period may be waived by mutual consent of the employer and the employee only if
18 the first meal period was not waived.

19 30. Defendants failed to provide Plaintiff and other members of the Meal Break Class
20 second meal periods in accordance with Labor Code Section 226.7 and 512, and Section 11 of
21 Wage Order 14-2001. Plaintiff is informed and believes and thereon alleges that during the
22 applicable limitations period, Defendants maintained and continues to maintain a policy or
23 practice of not providing or making available to putative class members a second meal period of
24 at least 30 minutes for each workday they worked more than 10 hours in any workday.

25 31. Defendants failed to provide Plaintiff and other members of the Meal Break Class
26 the additional hour of pay required by Labor Code Section 226.7 and Section 11 of Wage Order
27 14-2001 for late or missed meal periods. Plaintiff is informed and believes and thereon alleges
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1 that at all relevant times within the applicable limitations period, Defendants maintained and
2 continue to maintain a policy or practice of not paying additional pay to employees for late or
3 missed meal periods.

4 32. As a result of Defendants' unlawful conduct, Plaintiff and other members of the
5 Meal Break Class have suffered damages in an amount, subject to proof, to the extent they were
6 not paid all premiums owed for meal period violations.

7 33. Pursuant to Labor Code Section 218, Plaintiff and other members of the Meal
8 Break Class are entitled to recover the full amount of their unpaid additional pay for meal period
9 violations. Pursuant to Labor Code Section 218.5, Plaintiff and other members of the Meal
10 Break Class are entitled to recover their reasonable attorney's fees and costs of suit. Pursuant to
11 Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other members of the
12 Meal Break Class are entitled to recover prejudgment interest on the additional pay owed for
13 meal period violations.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

16 **(By Plaintiff and the Wage Statement Class against Defendants)**

17 34. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs, as
18 though they are set forth herein.

19 35. Labor Code Section 226(a) requires Defendants to furnish accurate itemized wage
20 statements to Plaintiff and other members of the Wage Statement Class that show, inter alia, "(1)
21 gross wages earned..." Defendants have knowingly and intentionally failed to comply with Labor
22 Code Section 226(a) by failing to list all wages earned, including the premium wages discussed
23 above.

24 36. As a consequence of Defendants' knowing and intentional failure to comply with
25 Labor Code Section 226(a), Plaintiff and each member of the Wage Statement Class she seeks to
26 represent are each entitled to actual damages or penalties not to exceed \$4,000 pursuant to Labor
27 Code Section 226(b), together with interest thereon and attorneys' fees and costs.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY WAGES UPON CESSATION OF EMPLOYMENT**

3 **(By Plaintiff and the Waiting Time Penalty Class against Defendants)**

4 37. Plaintiff incorporates by reference all of the foregoing paragraphs, as though they
5 are set forth herein.

6 38. Plaintiff and the other members of the Waiting Time Penalty Class were
7 employees of Defendants covered by Labor Code Sections 201 and 202 whose employment with
8 Defendants ended during the relevant class period. Plaintiff's employment ended on September
9 18, 2021.

10 39. Pursuant to Labor Code Sections 201 and 202, Plaintiff and other members of the
11 Waiting Time Penalty Class were entitled upon cessation of employment with Defendants to
12 timely payment of all wages earned and unpaid prior to termination. Discharged employees
13 were entitled to payment of all wages earned and unpaid prior to discharge immediately upon
14 termination. Employees who resigned were entitled to payment of all wages earned and unpaid
15 prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours
16 previous notice, they were entitled to payment of all wages earned and unpaid prior to
17 resignation at the time of resignation.

18 40. As alleged above, Defendants failed to pay Plaintiff and other members of the
19 Waiting Time Penalty Class all wages earned and unpaid prior to termination, including all break
20 premium wages owed at the time of the cessation of the employee-employer relationship in
21 accordance with Labor Code Sections 201 and 202. Plaintiff is informed and believes and
22 thereon alleges that at all relevant times within the applicable limitations period, Defendants
23 maintained and continue to maintain a policy or practice of not paying terminated employees all
24 their final wages, including break premium wages, earned before termination due under Labor
25 Code Section 201 or 202.

26 41. Defendants' failure to pay Plaintiff and members of the Waiting Time Penalty
27 Class all wages earned prior to termination in accordance with Labor Code Section 201 or 202
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1 was willful. Defendants had the ability to pay all wages earned by employees prior to
2 termination in accordance with Labor Code Section 201 or 202, but intentionally adopted
3 policies or practices incompatible with the requirements of Labor Code Sections 201 and 202.

4 42. Pursuant to Labor Code Sections 201 and 202, Plaintiff and other members of the
5 Waiting Time Penalty Class are entitled to all wages earned prior to termination that Defendants
6 failed to pay them.

7 43. Pursuant to Labor Code Section 203, Plaintiff and other members of the Waiting
8 Time Penalty Class are entitled to continuation of their wages, from the day their earned and
9 unpaid wages were due upon termination until paid, up to a maximum of 30 days.

10 44. As a result of Defendants' conduct, Plaintiff and other members of the Waiting
11 Time Penalty Class have suffered damages in an amount, subject to proof, to the extent they
12 were not paid for all wages earned prior to termination.

13 45. As a result of Defendants' conduct, Plaintiff and members of the Waiting Time
14 Penalty Class have suffered damages in an amount, subject to proof, to the extent they were not
15 paid all continuation wages owed under Labor Code Section 203.

16 46. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other members of the
17 Waiting Time Penalty Class are entitled to recover the full amount of their unpaid wages,
18 continuation wages under Labor Code Section 203, reasonable attorney's fees and costs of suit.
19 Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other members
20 of the Waiting Time Penalty Class are entitled to recover prejudgment interest on the amount of
21 their unpaid wages and unpaid continuation wages.

22 **FOURTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **(By Plaintiff and the Classes against Defendants)**

25 47. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs, as
26 though they are set forth in herein.

27 48. Beginning at an exact date unknown to Plaintiff, Defendants engaged in unfair
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1 competition as defined in California Business and Professions Code Section 17200.

2 49. Section 17200 provides a private cause of action for any “unlawful, unfair or
3 fraudulent business practice and unfair, deceptive, untrue or misleading advertising.”

4 50. At all times relevant to this action, Plaintiff and other members of the Classes were
5 employees of Defendants entitled to the benefits of Labor Code Sections 201-203, 226.7, 226 and
6 512, and the applicable IWC Wage Orders, including Wage Order 14-2001.

7 51. During the relevant time period, Defendants intentionally and willfully failed to
8 pay Plaintiff and other members of the Meal Break Class their meal break premium wages for
9 missed or non-compliant meal periods as required by law. Accordingly, Plaintiff and other
10 members of the Meal Break Class did not receive all wages they were entitled to receive by law.

11 52. During the relevant time period, Defendants intentionally and willfully failed to
12 furnish to Plaintiff and other members of the Wage Statement Class accurate itemized wage
13 statements that listed all wages earned, including premium wages. Accordingly, Plaintiff and other
14 members of the Wage Statement Class did not receive accurate wage statements they were entitled
15 to receive by law.

16 53. During the relevant time period, Defendants intentionally and willfully failed to
17 pay Plaintiff and other members of the Waiting Time Penalty Class premium wages upon
18 separation of employment by Defendants and, thereafter, failed to pay waiting time penalties
19 pursuant to Labor Code Section 203 to the members of the Waiting Time Penalty Class.
20 Accordingly, Plaintiff and members of the Waiting Time Penalty Class did not receive all wages
21 they were entitled to receive by law.

22 54. The unlawful conduct of Defendants alleged herein constitutes unfair competition
23 within the meaning of Business and Professions Code Section 17200. Due to its unlawful and
24 unfair business practices in violation of the Labor Code, Defendants have gained a competitive
25 advantage over other comparable companies doing business in the State of California that
26 comply with their obligations under the Labor Code.

27 55. As a result of Defendants’ unfair competition as alleged herein, Plaintiff and other
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1 members of the Classes have suffered injury in fact and lost money or property. Plaintiff and
2 members of the Classes have been deprived of their rights to premium wages for meal period
3 violations; accurate itemized wage statements; and/or timely payment of all earned wages,
4 including premium wages, due upon termination of employment.

5 56. Pursuant to Business and Professions Code Section 17203, Plaintiff and other
6 members of the Classes are entitled to restitution of the amount of the premium wages by which
7 Defendants underpaid them, and to their reasonable attorneys' fees and costs under Code of Civil
8 Procedure Section 1021.5.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff on behalf of herself and all others similarly situated, prays for
11 relief and judgment against Defendants as follows:

12 **CLASS CERTIFICATION:**

- 13 1. An order that the action be certified as a class action;
14 2. An order that Plaintiff be certified as the representative of the Classes;
15 3. An order that counsel for Plaintiff be confirmed as Class counsel;

16 **ON THE FIRST CAUSE OF ACTION:**

- 17 1. Damages for unpaid premiums for meal period violations;
18 2. Prejudgment interest;

19 **ON THE SECOND CAUSE OF ACTION:**

- 20 1. Damages for inaccurate wage statements for each pay period;
21 2. Prejudgment interest;

22 **ON THE THIRD CAUSE OF ACTION:**

- 23 3. Damages for unpaid wages earned prior to termination of employment;
24 4. Damages for unpaid continuation wages owed for failing to pay all earned wages
25 timely upon termination of employment;
26 5. Prejudgment interest;

1 **ON THE FOURTH CAUSE OF ACTION:**

- 2 1. Restitution of all unpaid wages and other monies owed and belonging to Class
- 3 members that Defendants unlawfully withheld from them and retained for
- 4 themselves;
- 5 2. Prejudgment interest;

6 **ON ALL CAUSES OF ACTION:**

- 7 1. Judgment in favor of Plaintiff and the putative Classes and against Defendants;
- 8 2. Reasonable attorney's fees and costs of suit; and
- 9 3. Such other relief as the Court deems just and proper.

10 Dated: February 25, 2022

MOSS BOLLINGER LLP

11 

12 By: _____

13 Jeremy F. Bollinger

14 Attorneys for Plaintiff Guillermina Ledezma

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff demands a trial by jury for herself and the Class on all claims so triable.

17 Dated: February 25, 2022

MOSS BOLLINGER LLP

18 

19 By: _____

20 Jeremy F. Bollinger

21 Attorneys for Plaintiff Guillermina Ledezma