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and all others similarly situated and aggrieved

SUPERIOR COURT OF CALIFORNIA

COUNTY OF TULARE

GABRIELA CONTRERAS, on behalf of
herself and all others similarly situated and
aggrieved,

Plaintiff,

v.

ACMPC CALIFORNIA 6, LLC dba
TREESOURCE CITRUS NURSERY, a
California Limited Liability Company;
ACM HUMAN RESOURCES, LLC, an
Oregon Limited Liability Company; and
DOES 1 Through 10, inclusive,

Defendants.

Case No. VCU290391

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

**1. FAILURE TO PAY MINIMUM,
REGULAR, AND OVERTIME WAGES
(Lab. Code §§ 510, 860, 1194 and 1194.2,
and Applicable IWC Wage Order(s), §§ 3
and 4)**

**2. FAILURE TO PAY SPLIT SHIFT
PREMIUM WAGES (Lab. Code § 1198
and Applicable IWC Wage Order(s), §§ 2
and 4(C))**

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- 3. FAILURE TO PAY REPORTING TIME
PAY (Lab. Code § 1198 and Applicable
IWC Wage Order(s), § 5)**
- 4. FAILURE TO PROVIDE MEAL
PERIODS (Lab. Code §§ 226.7 and 512 and
Applicable IWC Wage Order(s), § 11)**
- 5. FAILURE TO AUTHORIZE AND
PERMIT PAID REST PERIODS (Lab.
Code § 226.7 and Applicable IWC Wage
Order(s), § 12)**
- 6. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS
(Lab. Code § 226)**
- 7. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION
(Lab. Code §§ 201-203)**
- 8. VIOLATIONS OF THE UNFAIR
COMPETITION LAW
(Bus. & Prof. Code §§ 17200, *et seq.*)**
- 9. PAGA CIVIL PENALTIES FOR FAILURE
TO PAY MINIMUM, REGULAR, AND
OVERTIME WAGES**
- 10. PAGA CIVIL PENALTIES FOR
FAILURE TO PAY SPLIT SHIFT
PREMIUM WAGES**
- 11. PAGA CIVIL PENALTIES FOR
FAILURE TO PAY REPORTING TIME
PAY**
- 12. PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE MEAL
PERIODS**
- 13. PAGA CIVIL PENALTIES FOR
FAILURE TO AUTHORIZE AND
PERMIT PAID REST PERIODS**
- 14. PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**

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**15. PAGA CIVIL PENALTIES FOR
FAILURE TO MAINTAIN ACCURATE
RECORDS**

**16. PAGA CIVIL PENALTIES FOR
FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION**

**17. PAGA CIVIL PENALTIES FOR
FAILURE TO MAINTAIN A
REASONABLY COMFORTABLE
TEMPERATURE**

DEMAND FOR JURY TRIAL

NATURE OF CLAIM

1. Plaintiff GABRIELA CONTRERAS (“Plaintiff”) brings this action against Defendants ACMPC CALIFORNIA 6, LLC dba TREESOURCE CITRUS NURSERY, a California Limited Liability Company; ACM HUMAN RESOURCES, LLC, an Oregon Limited Liability Company; and Does 1 through 10 (collectively, “Defendants”) on behalf of herself and a proposed Class of all California-based non-exempt employees of Defendants (“Class Members”) for unlawful employment policies that denied, and continue to deny, Class Members the wages and benefits to which they are entitled.

2. Plaintiff, on behalf of herself and all Class Members, brings this action pursuant to Labor Code sections 201, 202, 203, 218.5, 226, 226.7, 510, 512, 860, 1182.12, 1194, 1194.2, 1197, and 1198; sections 2, 3, 4, 5, 11, and 12 of applicable Industrial Welfare Commission (“IWC”) Wage Order(s); and Business and Professions Code sections 17200, *et seq.*, seeking unpaid wages, liquidated damages, equitable relief, prejudgment interest, reasonable attorneys’ fees and costs, and any other relief this Court deems proper.

3. Plaintiff also brings this representative action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of herself and all other aggrieved employees for Defendants’ failure to: pay minimum, regular, and overtime wages; pay split shift premium wages; pay reporting time pay; provide meal periods; authorize and permit paid rest periods; provide accurate itemized wage statements; maintain accurate records; and timely pay wages due at separation.

4. Plaintiff gave written notice of these claims to the California Labor and Workforce Development Agency (“LWDA”) on February 8, 2022 per Labor Code section 2699.3, and there has been no LWDA intervention within 65 days of this notice. Plaintiff seeks civil penalties under the PAGA as a representative of the State of California and has standing as an aggrieved employee. Plaintiff seeks to represent all Defendants’ non-exempt employees in the State of California who suffered one or more of the violations alleged (“aggrieved employees”) during the “PAGA Period” (from the date of the filing of this amended complaint until the start of trial). Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

PARTIES

5. Plaintiff GABRIELA CONTRERAS is a resident of Tulare County, California. Plaintiff worked for Defendants at the Tree Source Citrus Nursery at 34816 Rd 192, Woodlake, California 93286, within Tulare County, California, as a non-exempt employee on and off and seasonally for approximately 20 years, ending September 13, 2021. Her job duties included pruning, packing, budding, sorting, and other nursery tasks.

6. Defendant ACMPC CALIFORNIA 6, LLC is a limited liability company in California doing business as TREESOURCE CITRUS NURSERY, which maintains operations at 34816 Rd 192, Woodlake, California 93286, where it serves the California citrus industry and greenhouse growers around the world by producing and selling starter trees called "Citrus Liners." The entity address of ACMPC CALIFORNIA 6, LLC is listed on the California Secretary of State's website as 38773 Road 48, Dinuba, California 93618, within Tulare County.

7. Defendant ACM HUMAN RESOURCES, LLC is a limited liability company registered in Oregon, and is a subsidiary of Agricultural Capital Management. ACM HUMAN RESOURCES, LLC is the company listed as the employer on Plaintiff's wage statements. The entity address of ACM HUMAN RESOURCES, LLC is listed on the California Secretary of State's website as 38773 Road 48, Dinuba, California 93618, within Tulare County.

8. Both "ACM Human Resources LLC" and "TreeSource, LLC" are listed on Plaintiff's weekly time cards.

9. Does 1 through 10, inclusive, are persons or entities whose true names and identities are now unknown to Plaintiff, and who are sued by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when known. Plaintiff is informed and believes each Doe defendant is the agent, representative, or parent or subsidiary corporation of the named Defendants, is responsible in some manner for the occurrences, events, transactions, and injuries alleged, and that harm suffered by Plaintiff and the proposed Class was proximately caused by them in addition to the named Defendants.

10. Plaintiff is informed and believes and alleges each of the Defendants, including

1 the Doe defendants, acted in concert with each and every other Defendant, intended to and did
2 participate in the events, acts, practices, and courses of conduct alleged, and was a proximate
3 cause of damage and injury to Plaintiff.

4 11. At all relevant times each Defendant was the agent or employee of each of the
5 other Defendants and was acting within the course and scope of such agency or employment.

6 **JURISDICTION AND VENUE**

7 12. Venue as to each Defendant is proper in this judicial district, because each
8 Defendant does business throughout California, including in Tulare County, California, and
9 Plaintiff worked for Defendants, and resides in, Tulare County, California. The unlawful acts
10 alleged directly affect Plaintiff and similarly-situated and aggrieved employees within Tulare
11 County and California.

12 13. No federal jurisdiction exists to remove this action to federal court. No federal
13 question is at issue, as the issues are based solely on California law, including the Labor Code,
14 IWC Wage Orders, Code of Civil Procedure, and Business and Professions Code. On
15 information and belief, no diversity jurisdiction exists sufficient for removal to federal court
16 under 28 U.S.C. sections 1332(a) or 1332(d) because Class Members' individual amounts in
17 controversy do not exceed \$75,000 and the class amount in controversy does not exceed
18 \$5,000,000.

19 14. Further, as a representative action under the PAGA, the matter is not subject to
20 removal under 28 U.S.C. sections 1332(a)-(d) as PAGA civil penalty actions are not subject to
21 federal jurisdiction.

22 **CLASS ACTION ALLEGATIONS**

23 15. Plaintiff seeks to represent a Class defined as:

24 **Class**

25 All Defendants' California-based non-exempt employees at any time
26 during the four years before the filing of this Complaint through the date
of trial.

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16. Plaintiff seeks to certify a Subclass of employees defined as:
- “Minimum Wages Subclass”**
All Class Members who were not paid minimum wages for all time worked or subject to Defendants’ control.
17. Plaintiff seeks to certify a Subclass of employees defined as:
- “Overtime Wages Subclass”**
All Class Members who worked one or more period(s) of overtime as defined by Labor Code sections 510 or 860.
18. Plaintiff seeks to certify a Subclass of employees defined as:
- “Split Shift Premium Wages Subclass”**
All Class Members who had a work schedule which was interrupted by a non-paid non-working period established by Defendants, other than a bona fide rest or meal period.
19. Plaintiff seeks to certify a Subclass of employees defined as:
- “Reporting Time Pay Subclass”**
All Class Members who reported to work but were required to clock out after fewer than half the hours of their usual or scheduled shift.
20. Plaintiff seeks to certify a Subclass of employees defined as:
- “First Meal Period Subclass”**
All Class Members who worked one or more period(s) in excess of five (5) hours.
21. Plaintiff seeks to certify a Subclass of employees defined as:
- “Second Meal Period Subclass”**
All Class Members who worked one or more period(s) in excess of ten (10) hours.
22. Plaintiff seeks to certify a Subclass of employees defined as:
- “First Rest Period Subclass”**
All Class Members who worked one or more period(s) in excess of three and one-half (3.5) hours.
23. Plaintiff seeks to certify a Subclass of employees defined as:
- “Second Rest Period Subclass”**
All Class Members who worked one or more period(s) in excess of six (6) hours.
24. Plaintiff seeks to certify a Subclass of employees defined as:
- “Third Rest Period Subclass”**
All Class Members who worked one or more period(s) in excess of ten (10) hours.

25. Plaintiff seeks to certify a Subclass of employees defined as:

“Wage Statement Subclass”

All Class Members who received one or more itemized wage statements during the one year preceding the filing of this Complaint.

26. Plaintiff seeks to certify a Subclass of employees defined as:

“Waiting Time Subclass”

All Class Members whose employment ended at any time during the three years preceding the filing of this Complaint.

27. Plaintiff seeks to certify a Subclass of employees defined as:

“UCL Subclass”

All Class and Subclass Members who were subject to Defendants’ unlawful or unfair business acts or practices.

28. Plaintiff reserves the right to amend or modify the Class description, including by division into Subclasses or limitation to particular issues. California Rule of Court 3.765(b).

29. **Commonality**: This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

30. **Ascertainable Class**: The proposed Class and Subclasses are ascertainable because they can be identified and located using Defendants’ payroll and personnel records.

31. **Numerosity**: The potential members of the Class and Subclasses as defined are so numerous that joinder of all members would be unfeasible and impractical. The disposition of their claims through this class action will benefit the parties and this Court. The number of members of the Class and Subclasses is unknown to Plaintiff, but is estimated to be in excess of 100 individuals. The number and identity of members can be readily ascertained using Defendants’ records.

32. **Typicality**: The claims of Plaintiff are typical of the claims of all members of the Class and Subclasses because all members of the Class and Subclasses sustained similar injuries and damages caused by Defendants’ common course of conduct in violation of law.

33. **Adequacy**: Plaintiff is an adequate representative of the Class and Subclasses, will fairly protect the interests of the Class and Subclass Members and has no interests antagonistic to them, and will vigorously pursue this suit. Plaintiff’s attorneys are competent,

1 skilled, and experienced in litigating large employment law class actions.

2 34. **Superiority**: A class action is superior to other available means for the fair and
3 efficient adjudication of this controversy. Individual joinder of all Class Members is not
4 practicable, and questions of law and fact common to the Class predominate over questions
5 affecting only individual Class Members. A Class action will allow those similarly situated to
6 litigate their claims in the most efficient and economical manner for the parties and the judicial
7 system. Plaintiff is unaware of any difficulties likely to be encountered in the management of
8 this action that precludes its maintenance as a class action.

9 35. The predominating common questions of law and fact include:

- 10 a. Whether Defendants have a policy or practice of failing to pay minimum
11 wages for all time worked or subject to Defendants' control;
- 12 b. Whether Defendants have a policy or practice of failing to pay overtime
13 wages for hours worked in excess of those designated as overtime hours
14 under Labor Code sections 510 or 860;
- 15 c. Whether Defendants have a policy or practice of failing to pay split shift
16 premium wages;
- 17 d. Whether Defendants have a policy or practice of failing to pay reporting
18 time pay;
- 19 e. Whether Defendants have a policy or practice of failing to provide
20 compliant meal periods or premium wages in lieu thereof;
- 21 f. Whether Defendants have a policy or practice of failing to authorize and
22 permit compliant rest periods or premium wages in lieu thereof;
- 23 g. Whether Defendants have a policy or practice of failing to provide accurate
24 itemized wage statements;
- 25 h. Whether the Class and Waiting Time Subclass Members are entitled to
26 waiting time penalties under Section 203;
- 27 i. Whether Defendants violated Sections 17200, *et seq.* of the Business and
28 Professions Code; and

j. Whether the Class and Subclasses are entitled to equitable relief pursuant to Business and Professions Code sections 17200, *et seq.*

FACTUAL ALLEGATIONS

36. During the Class and PAGA Periods, Plaintiff, Class Members, and other aggrieved employees were employed by Defendants in California and worked under the same policies, practices, and procedures promulgated by Defendants relating to their employment.

37. During the Class and PAGA Periods, after the onset of the COVID-19 pandemic, Defendants had a consistent policy of not paying wages for all time worked or subject to their control. Specifically, Defendants required Plaintiff, Class Members, and other aggrieved employees to clock in, undergo a temperature check, which usually took approximately two to five minutes, then clock out until their shift start time. Plaintiff, Class Members, and other aggrieved employees were required to wait, often for an hour and sometimes for nearly two hours, between the time they clocked out after their temperature checks and when they were allowed to clock back in to begin their shifts. Defendants did not pay any wages for this time, despite it being subject to Defendants' control. Defendants also did not pay split shift premium wages to Plaintiff, Class Members, and other aggrieved employees despite Defendants establishing this interruption of working time by non-paid, non-working periods, which were not bona fide rest or meal periods; amounts paid by Defendants above minimum wage were not always sufficient to offset the need for one hour of minimum wage pay as a split shift premium. Defendants further failed to pay reporting time pay to Plaintiff, Class Members, and other aggrieved employees despite requiring them to report to work then clock out after fewer than half the hours of their usual or scheduled shift.

38. During the Class and PAGA Periods, Defendants had a consistent policy of not paying overtime wages for hours worked over eight (8) per day or forty (40) per week under Labor Code section 510. Alternatively, Defendants failed to pay overtime wages for hours worked over those designated as overtime hours under Labor Code section 860 for those

1 employed in an agricultural occupation as defined in Wage Order 14-2001.¹ For instance, for
2 the workweek of 01/11/2021 through 01/17/2021, Defendants paid Plaintiff regular wages for
3 45.70 hours worked, despite Labor Code section 860 requiring overtime wages to be paid for
4 hours worked over 45 in a workweek in 2021.

5 39. During the Class and PAGA Periods, Defendants had a consistent policy which
6 did not provide Plaintiff, Class Members, and other aggrieved employees with first duty-free
7 meal periods of at least thirty (30) minutes for shifts of five hours or more, which began before
8 the end of the fifth hour of work, and second such meal periods for shifts of ten hours or more,
9 which began before the end of the tenth hour of work, and failed to pay such employees one (1)
10 hour of pay at their regular rate of compensation for each workday a meal period was not
11 provided. Meal periods were routinely less than 30 minutes because Plaintiff, Class Members,
12 and other aggrieved employees were required to walk to a break room for lunch and back from
13 the break room to resume work, and were required to wash their hands and don and doff aprons
14 and gloves, during this 30-minute timeframe. On information and belief, Plaintiff, Class
15 Members, and other aggrieved employees did not waive their right to receive meal periods,
16 including their right to a second meal period on eligible workdays. On information and belief,
17 Defendants did not provide Plaintiff, Class Members, and other aggrieved employees with a
18 written meal period policy.

19 40. During the Class and PAGA Periods, Defendants had a consistent policy which
20 did not authorize and permit Plaintiff Class Members, and other aggrieved employees to
21 receive duty-free rest periods of at least ten (10) minutes per four (4) hours, or major fraction,
22 worked, and failed to pay such employees one (1) hour of pay at their regular rate of
23 compensation for each workday a rest period was not authorized and permitted. Rest periods
24 were routinely less than 10 minutes because Plaintiff and Class Members were required to wash
25 their hands and don and doff aprons and gloves during this 10-minute timeframe. On
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28 ¹ It is unclear whether Plaintiff, Class Members, and other aggrieved employees were subject to
Wage Order 14-2001 for Agricultural Occupations, or another wage order like Wage Order 8-
2001 for Industries Handling Products After Harvest.

1 information and belief, Defendants did not provide Plaintiff, Class Members, and other
2 aggrieved employees with a written rest period policy.

3 41. During the Class and PAGA Periods, Defendants knowingly and willfully failed
4 to provide accurate itemized wage statements to Plaintiff, Class Members, and other aggrieved
5 employees which did not include, among other things, the name and address of the legal entity
6 that is the employer and all applicable hourly rates in effect during the pay period and the
7 corresponding number of hours worked at each hourly rate. Specifically, Plaintiff's wage
8 statements did not list TREESOURCE, LLC as the employer, despite "TREESOURCE, LLC"
9 being listed as the employer on Defendants' Labor Code section 2810.5 notice to Plaintiff.
10 Defendants also did not list any hourly rates of pay on Plaintiff's wage statements.
11 Additionally, because Defendants failed to compensate Plaintiff, Class Members, and other
12 aggrieved employees for minimum and overtime wages, meal and rest period premium wages,
13 split shift premium wages, and reporting time pay, the itemized wage statements provided by
14 Defendants to Plaintiff, Class Members, and other aggrieved employees were inaccurate as to
15 the total hours worked and gross and net wages earned. As a result, the wage statements that
16 Defendants furnished to Plaintiff, Class Members, and other aggrieved employees failed to
17 comply with the requirements of Labor Code section 226(a). Also, as a result, Defendants
18 failed to maintain accurate payroll records showing the hours worked daily by Plaintiff and
19 other aggrieved employees as required by Labor code section 1174(d).

20 42. Because Defendants had a consistent policy of failing to pay all minimum and
21 overtime wages, meal and rest period premium wages, split shift premium wages, and reporting
22 time pay owed during Plaintiff's, Class Members', and other aggrieved employees'
23 employment, final wages paid during the Class and PAGA Periods were underpaid, as they did
24 not include these amounts.

25 43. During the PAGA Period, Defendants failed to take measures to maintain a
26 reasonably comfortable temperature at their facilities at which Plaintiff and other aggrieved
27 employees worked. For instance, Plaintiff was subjected to very hot temperatures when she
28 worked in Defendants' warehouse.

44. Defendants' failure to: pay minimum and overtime wages; pay split shift premium wages; pay reporting time pay; provide compliant meal and rest periods or premium wages in lieu thereof; provide accurate, itemized wage statements; and timely provide final wages to Plaintiffs, Class Members, and other aggrieved employees upon separation all stem from Defendants' centrally devised and uniformly implemented unlawful and unfair policies and practices. Defendants' failure to maintain accurate records and to maintain a reasonably comfortable temperature as to Plaintiff and other aggrieved employees also stem from Defendants' centralized policies and practices.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Failure to Pay Minimum, Regular, and Overtime Wages Labor Code §§ 510, 860, 1194, and 1194.2 and §§ 3 and 4 of applicable IWC Wage Order(s)

(By Plaintiff and each Member of the Minimum Wages and Overtime Wages Subclasses)

45. Plaintiff incorporates the preceding paragraphs of this Complaint.

46. Defendants failed to pay minimum wages for all time worked or spent subject to Defendants' control. By failing to pay minimum wages, Defendants violated Labor Code section 1194, and section 4 of applicable IWC Wage Order(s).

47. Defendants failed to pay overtime wages for hours worked over eight (8) in one day or forty (40) in one week under Labor Code section 510. Alternatively, Defendants failed to pay overtime wages for hours worked over: nine and one-half (9.5) per day or fifty-five (55) per week in 2019; nine (9) per day or fifty (50) per week in 2020; eight and one-half (8.5) or forty-five (45) per week in 2021; and eight (8) per day or forty (40) per week in 2022, under Labor Code section 860, which applies to persons "involved in an agricultural occupation." By failing to pay overtime wages, Defendants violated Labor Code sections 510 or 860 and 1194, and section 3 of applicable IWC Wage Order(s).

48. Defendants' unlawful acts deprived Plaintiff, the Class, and the Minimum and Overtime Wages Subclasses of minimum and overtime wages in amounts to be determined at trial, and they are entitled to recover these amounts, prejudgment interest on these amounts under Labor Code section 218.6, liquidated damages in an amount equal to the minimum wages

1 unlawfully unpaid under Labor Code section 1194.2, attorneys' fees, and costs.

2 **SECOND CAUSE OF ACTION**

3 **Failure to Pay Split Shift Premium Wages**

4 **Labor Code § 1198 and §§ 2 and 4(C) of applicable IWC Wage Order(s)**
5 **(By Plaintiff and each Member of the Split Shift Premium Wages Subclass)**

6 49. Plaintiff incorporates the preceding paragraphs of this Complaint.

7 50. Defendants failed to pay split shift premium wages to Plaintiff and Class
8 Members when they were entitled to them. By failing to pay split shift premium wages,
9 Defendants violated Labor Code section 1198, and section 4(C) of applicable IWC Wage
10 Order(s).

11 51. Defendants' unlawful acts deprived Plaintiff, the Class, and the Split Shift
12 Premium Wages Subclass of split shift premium wages in amounts to be determined at trial,
13 and they are entitled to recover these amounts, prejudgment interest on these amounts under
14 Labor Code section 218.6, attorneys' fees, and costs.

15 **THIRD CAUSE OF ACTION**

16 **Failure to Pay Reporting Time Pay**

17 **Labor Code § 1198 and § 5 of applicable IWC Wage Order(s)**
18 **(By Plaintiff and each Member of the Reporting Time Pay Subclass)**

19 52. Plaintiff Incorporates the preceding paragraphs of this Complaint.

20 53. Defendants failed to pay reporting time pay when Plaintiff and Class Members
21 were entitled to this pay. By failing to pay reporting time pay, Defendants violated Labor Code
22 section 1198, and section 5 of applicable IWC Wage Order(s).

23 54. Defendants' unlawful acts deprived Plaintiff, the Class, and the Reporting Time
24 Pay Subclass of reporting time pay in amounts to be determined at trial, and they are entitled to
25 recover these amounts, prejudgment interest on these amounts under Labor Code section 218.6,
26 attorneys' fees, and costs.

27 **FOURTH CAUSE OF ACTION**

28 **Failure to Provide Meal Periods**

Labor Code §§ 226.7 and 512 and § 11 of applicable IWC Wage Order(s)
(By Plaintiff and each Member of the First and Second Meal Period Subclasses)

55. Plaintiff incorporates the preceding paragraphs of this Complaint.

57. Defendants' unlawful acts deprived Plaintiff, the Class, and the First and Second Meal Period Subclasses of premium wages in amounts to be determined at trial, and they are entitled to recover these amounts and prejudgment interest on these amounts under Labor Code section 218.6.

Failure to Authorize and Permit Paid Rest Periods
Labor Code § 226.7 and § 12 of applicable IWC Wage Order(s)
(By Plaintiff and each Member of the First, Second, and Third Rest Period Subclasses)

58. Plaintiff incorporates the preceding paragraphs of this Complaint.

59. By failing to authorize and permit Plaintiff and Class Members a paid rest period of at least 10 minutes for every four hours or major fraction worked per day, and by failing to provide premium wages at the regular rate of pay when not authorized and permitted, Defendants willfully violated the provisions of Labor Code section 226.7 and section 12 of applicable IWC Wage Order(s).

60. Defendants' unlawful acts deprived Plaintiff, the Class, and the First, Second, and Third Rest Period Subclasses of premium wages in amounts to be determined at trial, and they are entitled to recover these amounts and prejudgment interest on these amounts under Labor Code section 218.6.

**Failure to Provide Accurate Itemized Wage Statements
Labor Code § 226
(By Plaintiff and each Member of the Wage Statement Subclass)**

61. Plaintiff incorporates the preceding paragraphs of this Complaint.

62. All employers must provide employees accurate, itemized wage statements showing certain categories of information. Labor Code § 226.

63. Defendants knowingly failed to comply with Labor Code section 226 by, among other things, failing to provide wage statements showing the name and address of the legal entity that is the employer and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Wage statements issued were also derivatively inaccurate as a result of Defendants' failure to pay all wages owed.

64. Any employee suffering injury due to a willful violation of Labor Code section 226(e) may collect the greater of actual damages or \$50 for the first inadequate pay statement and \$100 for each inadequate statement thereafter, not to exceed \$4,000. Defendants consistently failed to provide Plaintiff and Class Members with required adequate wage statements. Labor Code § 226.

65. As a consequence of Defendants' knowing and intentional failure to comply with Labor Code section 226(a), Plaintiff, the Class, and the Wage Statement Subclass are entitled to recover the greater of actual damages or penalties not to exceed \$4,000 for each employee.

SEVENTH CAUSE OF ACTION

Failure to Timely Pay Wages Due at Separation

Labor Code §§ 201-203

(By Plaintiff and each Member of the Waiting Time Subclass)

66. Plaintiff incorporates the preceding paragraphs of this Complaint.

67. An employer who discharges an employee must pay all compensation due and to that employee immediately upon discharge. Labor Code § 201. An employer must pay all compensation due to an employee who quits within 72 hours. Labor Code § 202.

68. Defendants had a consistent and uniform policy of willfully failing to timely pay earned wages to former employees. If an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until paid or until an action is commenced. Labor Code § 203. The penalty cannot exceed 30 days of wages.

69. Members of the Waiting Time Subclass are no longer employed by Defendants.

70. Defendants willfully failed to pay Plaintiff, the Class, and the Waiting Time Subclass the sum due at the time of employees' termination or within seventy-two (72) hours of their resignation, and failed to pay those sums for thirty (30) days thereafter, entitling these employees to recover waiting time penalties.

EIGHTH CAUSE OF ACTION
Violations of the Unfair Competition Law
Bus. & Prof. Code §§ 17200, *et seq.*
(By Plaintiff and each Member of the UCL Subclass)

71. Plaintiff incorporates the preceding paragraphs of this Complaint.

72. The California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code sections 17200, *et seq.*, defines unfair competition to include any "unlawful," "unfair," or "fraudulent" business act or practice. Cal. Bus. & Prof. Code § 17200.

73. Defendants' conduct as described above constitutes unlawful business practices because Defendants violated: the California Labor Code, including but not limited to sections 226.7 (meal and rest period premium wages), 510 and 1194 (minimum and overtime wages), and 1198 (split shift premium wages and reporting time pay); and sections 3, 4, 5, 11, and 12 of applicable IWC Wage Order(s).

74. Defendants' conduct as described above constitutes unfair business practices because their denial of lawfully earned wages outweighs any utility of such practices.

75. As a result of Defendants' unlawful and unfair conduct, Plaintiff and Class Members suffered injury in fact.

76. Plaintiff and Class Members seek declaratory and injunctive relief, restitution, and other appropriate equitable relief. Cal. Bus. & Prof. Code §§ 17203, 17204.

77. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff and Class Members are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

78. This cause of action is brought as a cumulative remedy and is intended as an alternative remedy for restitution for Plaintiff, and each Subclass Member, for the four (4) year period before the filing of this Complaint, and as the primary remedy during the fourth year

1 before the filing of this Complaint. Business and Professions Code § 17205.

2 **NINTH CAUSE OF ACTION**
3 **PAGA Civil Penalties for Failure to Pay Minimum, Regular, and Overtime Wages**
4 **Labor Code §§ 2698, *et seq.***
5 **(By Plaintiff and Each Aggrieved Employee)**

6 79. Plaintiff incorporates the preceding paragraphs of this Complaint.

7 80. Labor Code section 2699(a) provides: “[A]ny provision of this code that
8 provides for a civil penalty to be assessed and collected by the Labor and Workforce
9 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
10 employees, for a violation of this code, may, as an alternative, be recovered through a civil
11 action brought by an aggrieved employee on behalf of himself or herself and other current or
12 former employees pursuant to the procedures specified in Section 2699.3.”

13 81. Labor Code section 2699(f)(2) provides: “For all provisions of this code except
14 those for which a civil penalty is specifically provided, there is established a civil penalty for a
15 violation of these provisions [] (2) If, at the time of the alleged violation, the person employs
16 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
17 employee per pay period for the initial violation and two hundred dollars (\$200) for each
18 aggrieved employee per pay period for each subsequent violation.”

19 82. As alleged herein, Plaintiff and other aggrieved employees were not paid
20 minimum, regular, and overtime wages as appropriate under the law for all time worked or
21 subject to Defendants’ control.

22 83. Plaintiff will seek \$100 for the initial pay period an employee was underpaid,
23 and \$200 for each subsequent violation. Funds recovered will be distributed in accordance with
24 the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of
25 California. The amount of the applicable penalty will be proven at trial.

26 **TENTH CAUSE OF ACTION**
27 **PAGA Civil Penalties for Failure to Pay Split Shift Premium Wages**
28 **Labor Code §§ 2698, *et seq.***
(By Plaintiff and Each Aggrieved Employee)

84. Plaintiff incorporates the preceding paragraphs of this Complaint.

86. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California. The amount of the applicable penalty will be proven at trial.

ELEVENTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Pay Reporting Time Pay
Labor Code §§ 2698, *et seq.*
(By Plaintiff and Each Aggrieved Employee)

87. Plaintiff incorporates the preceding paragraphs of this Complaint.

88. As alleged herein, Plaintiff and other aggrieved employees were not paid reporting time pay when they reported to work but were required to clock out after fewer than half the hours of their usual or scheduled shift.

89. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California. The amount of the applicable penalty will be proven at trial.

TWELFTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Provide Meal Periods
Labor Code §§ 2698, *et seq.*
(By Plaintiff and Each Aggrieved Employee)

90. Plaintiff incorporates the preceding paragraphs of this Complaint.

91. As alleged herein, Plaintiff and other aggrieved employees were not always provided with a compliant 30-minute meal period after five hours of work nor a second such meal period after ten hours of work, nor were they provided with premium wages to account for these violations.

92. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not provided a compliant meal period or premium wages in lieu thereof, and \$200 for each

1 subsequent violation. Labor Code § 2699(f)(2). Funds recovered will be distributed in
2 accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of
3 the State of California. The amount of the applicable penalty will be proven at trial.

4 **THIRTEENTH CAUSE OF ACTION**

5 **PAGA Civil Penalties for Failure to Authorize and Permit Paid Rest Periods**

6 **Labor Code §§ 2698, *et seq.***

7 **(By Plaintiff and Each Aggrieved Employee)**

8 93. Plaintiff incorporates the preceding paragraphs of this Complaint.

9 94. As alleged herein, Plaintiff and other aggrieved employees were not always
10 provided with a compliant 10-minute paid rest period after four hours, or major fraction
11 thereof, of work nor a second such rest period after six hours, nor a third such rest period after
12 ten hours, nor were they provided with premium wages to account for these violations.

13 95. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
14 not provided a compliant rest period or premium wages in lieu thereof, and \$200 for each
15 subsequent violation. Labor Code § 2699(f)(2). Funds recovered will be distributed in
16 accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of
17 the State of California. The amount of the applicable penalty will be proven at trial.

18 **FOURTEENTH CAUSE OF ACTION**

19 **PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements**

20 **Labor Code §§ 2698, *et seq.***

21 **(By Plaintiff and Each Aggrieved Employee)**

22 96. Plaintiff incorporates the preceding paragraphs of this Complaint.

23 97. Labor Code section 226.3 provides for civil penalties for violations of Section
24 226.

25 98. As described herein, Plaintiff and other aggrieved employees were not provided
26 accurate itemized wage statements showing the correct employer name, total hours worked,
27 gross and net wages earned, and all hourly rates and the corresponding hours worked at each
28 rate.

99. Plaintiff will seek civil penalties of \$250 for the initial violation and \$1,000 for
each subsequent violation. Labor Code § 226.3. Funds recovered will be distributed in

1 accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf
2 of the State of California. The amount of the applicable penalty will be proven at trial.

3 **FIFTEENTH CAUSE OF ACTION**

4 **PAGA Civil Penalties for Failure to Maintain Accurate Records**
5 **(By Plaintiff and Each Aggrieved Employee)**

6 100. Plaintiff incorporates the preceding paragraphs of this Complaint.

7 101. California employers must “keep...payroll records showing the hours worked
8 daily by and the wages paid to...employees employed at the respective plants or
9 establishments...for not less than three years.” Cal. Lab. Code § 1174(d).

10 102. Labor Code section 1174.5 imposes a \$500 civil penalty for any failure to
11 maintain records required by Section 1174(d).

12 103. As alleged herein, Defendants failed to maintain accurate records of the hours
13 worked daily by employees.

14 104. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
15 underpaid, and \$200 for each subsequent violation under Labor Code section 2699(f)(2) and/or
16 penalties provided for in Labor Code section 1174.5. Funds recovered will be distributed in
17 accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf
18 of the State of California. The amount of the applicable penalty will be proven at trial.

19 **SIXTEENTH CAUSE OF ACTION**

20 **PAGA Civil Penalties for Failure to Timely Pay Wages Due at Separation**
21 **Labor Code §§ 2698, *et seq.***
22 **(By Plaintiff and Each Aggrieved Employee)**

23 105. Plaintiff incorporates the preceding paragraphs of this Complaint.

24 106. As alleged herein, Defendants failed to pay Plaintiff and other aggrieved
25 employees wages during their employment which resulted in Defendants’ failure to time pay
26 all wages owed to these employees upon separation.

27 107. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
28 not reimbursed, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds
recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties
provided to the LWDA on behalf of the State of California. The amount of the applicable

1 penalty will be proven at trial.

2 **SEVENTEENTH CAUSE OF ACTION**

3 **PAGA Civil Penalties for Failure to Maintain a Reasonably Comfortable Temperature**

4 **Labor Code §§ 2698, *et seq.***

4 **(By Plaintiff and Each Aggrieved Employee)**

5 108. Plaintiff incorporates the preceding paragraphs of this Complaint.

6 109. “The...standard conditions of labor fixed by the commission shall be the...
7 standard conditions of labor for employees. The employment of any employee...under
8 conditions of labor prohibited by the order is unlawful.” Labor Code § 1198.

9 110. Section 15(A) of the applicable Wage Order(s) provides: “The temperature
10 maintained in each work area shall provide reasonable comfort consistent with industry-wide
11 standards for the nature of the process and the work performed.”

12 111. As alleged herein, Defendants failed to maintain a reasonably comfortable
13 temperature for Plaintiff and other aggrieved employees.

14 112. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
15 subjected to a temperature which was not reasonably comfortable, and \$200 for each
16 subsequent violation. Labor Code § 2699(f)(2). Funds recovered will be distributed in
17 accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf
18 of the State of California. The amount of the applicable penalty will be proven at trial.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff prays for the following relief on behalf of herself and the
21 Class against Defendants:

22 1. Certification of this action as a class action and appointment of Plaintiff and
23 Plaintiff’s counsel to represent the Class;

24 2. Provision of class notice to Class Members as defined above;

25 3. A declaratory judgment that Defendants knowingly and intentionally violated:

26 a. California Labor Code sections 510, 1194, and/or 860 by failing to pay
27 minimum and overtime wages;

28 b. California Labor Code section 1198 by failing to pay split shift

premium wages;

c. California Labor Code section 1198 by failing to pay reporting time pay;

d. California Labor Code sections 226.7 and 512 by failing to provide meal and rest periods or compensation in lieu thereof;

e. California Labor Code section 226 by failing to provide accurate, itemized wage statements;

f. California Labor Code section 203 by failing to pay waiting time penalties; and

g. California Business and Professions Code sections 17200, *et seq.* by engaging in unlawful or unfair business practices.

4. That Defendants be permanently enjoined from engaging in the unlawful or unfair acts and practices alleged;

5. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff and Class Members, in an amount according to proof, pursuant to California Business and Professions Code section 17203;

6. Compensatory damages according to proof;

7. Statutory damages as provided under the Labor Code;

8. Liquidated damages as provided under the Labor Code;

9. Pre-judgment interest on all sums collected;

10. That this action be maintained as a PAGA Representative Action and that Plaintiff and her counsel be provided with enforcement capability as if the action were brought by the DLSE;

11. For recovery of all civil penalties as allowed by Labor Code section 2699, according to proof, for unpaid minimum, regular, and overtime wages under Labor Code sections 510, 860, 1194, and 1194.2;

12. For recovery of all civil penalties as allowed by Labor Code section 2699, according to proof, for unpaid split shift premium wages under Labor Code section 1198;

13. For recovery of all civil penalties as allowed by Labor Code section 2699, according to proof, for unpaid reporting time pay under Labor Code section 1198;

14. For recovery of all civil penalties as allowed by Labor Code section 2699, according to proof, for unpaid meal period premium wages under Labor Code section 226.7;

15. For recovery of all civil penalties as allowed by Labor Code section 2699, according to proof, for unpaid rest period premium wages under Labor Code section 226.7;

16. For recovery of civil penalties as permitted by Labor Code section 2699 and/or 226.3, for inaccurate itemized wage statements under Labor Code section 226;

17. For recovery of civil penalties as permitted by Labor Code section 2699 and/or 1174.5, for failure to maintain accurate records under Labor Code section 1174(d);

18. For recovery of civil penalties as permitted by Labor Code section 2699 for failure to timely pay final wages under Labor Code section 203;

19. For recovery of civil penalties as permitted by Labor Code section 2699 for failure to maintain a reasonably comfortable temperature under Labor Code section 1198;

20. For all civil penalties to be distributed 75 percent to the LWDA and 25 percent to the aggrieved employees pursuant to Labor Code section 2699(i);

21. Reasonable attorneys' fees and costs of suit, pursuant to California Code of Civil Procedure section 1021.5, California Labor Code sections 218.5, 226(e), 1194, 1197, and 2698, *et seq.*, or other applicable law; and

22. Such other relief as the Court may deem appropriate.

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

Dated: August 12, 2022

By:



Michael D. Singer, Esq.

Jeff Geraci, Esq.

Rosemary C. Khoury, Esq.

Attorneys for Plaintiff Gabriela Contreras, on
behalf of herself and all others similarly situated and
aggrieved

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1 **PROOF OF SERVICE**

2 *Contreras v. ACMPC California 6, LLC dba Treesource Citrus Nursery, et al.*

3 Tulare Superior Court Case No. VCU290391

4 I, Amber Worden, declare as follows:

5 I am employed in the County of San Diego, State of California. I am over the age of 18 and not a
6 party to this action. My business address is 605 "C" Street, Suite 200, San Diego, California 92101.

7 On August 12, 2022, I instituted service of the forgoing document(s) described as:

8 **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

9 on the following interested parties:

10 **Counsel for Defendant**

11 Daniel K. Klingenger, Esq.
12 Mathew M. Brady, Esq.
13 LEBEAU THELEN LLP
14 5001 E. Commercenter Drive, Suite 300
15 P.O. Box 12092
16 Bakersfield, CA 93309
17 dklingenger@lebeauthelen.com
18 mbrady@lebeauthelen.com

Co-counsel for Plaintiff

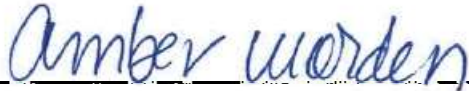
Sahag Majarian, Esq.
LAW OFFICES OF SAHAG MAJARIAN II
18250 Ventura Blvd.
Tarzana, CA 91356
sahagii@aol.com

15 in the manner described below:

16 **[XX] BY EMAIL:** Pursuant to Cal. Code of Civil Procedure section 1010.6(e)(1), I transmitted the
17 foregoing document(s) electronically via the email addresses listed above.

18 **[XX] STATE:** I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed August 12, 2022, at San Diego, California.

21 
22 _____
23 Amber Worden