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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF KERN**
14

15 STATE OF CALIFORNIA ex rel.
16 MARIA L. GONZALEZ, as Private
Attorney General,
17
Plaintiff,
18 v.
19 DEMLER ENTERPRISES, LLC; and
20 DOES 1-25, inclusive,
21 Defendants.
22

Case No. BCV-22-101273

Assigned for All Purposes to:

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Trial Date: None

Complaint filed:

23
24 COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. MARIA L. GONZALEZ as
25 Private Attorney General (“Plaintiff”), who asserts claims against DEMLER ENTERPRISES,
26 LLC, and DOES 1-25, inclusive (collectively “Defendants” or “Employer”) as follows:
27
28

1 **INTRODUCTION**

2 1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of
3 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of herself, approximately 50
4 similarly situated current and former aggrieved employees, and the People of the State of
5 California (hereinafter collectively “Employees”) employed by Employer between March 14,
6 2021, and the conclusion of the action (“Statutory Period”).

7 2. PAGA, specifically Section 2699, subdivision (a) of the California Labor Code,
8 permits an aggrieved employee to recover civil penalties set forth within the California Labor
9 Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil
10 penalties for violations of California Labor Code provisions that do not contain their own civil
11 penalties. Employees bring this civil action to recover civil penalties for the violations identified
12 below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil
13 penalties specifically set forth within the text of the California Labor Code. Those civil penalties
14 are sought for violations committed against Employees of Employers.

15 3. Plaintiff has filed an exhaustion letter with the California Labor and Workforce
16 Development Agency (“LWDA”) providing notice of his intent to bring a private attorneys
17 general action for recovery of penalties under the PAGA. The LWDA has not investigated within
18 the time set forth by statute and Plaintiff is now authorized to bring the present action.

19 **JURISDICTION AND VENUE**

20 4. This Court has jurisdiction over this action pursuant to the California Constitution,
21 Article VI, §10.

22 5. Venue is proper in this Court because this action arises from work performed in
23 Santa Barbara County.

24 **PARTIES**

25 6. For all times relevant herein, MARIA L. GONZALEZ was an adult individual
26 residing in the State of California. Ms. Gonzalez is not suing in her individual capacity; she is
27 proceeding herein solely under the PAGA, on behalf of the State of California for all aggrieved
28 employees, including herself and other aggrieved employees.

1 7. For all times relevant herein, Plaintiff is informed and believes, and on that basis
2 alleges, that Defendant DEMLER ENTERPRISES, LLC was and is a corporation with its
3 principal place of business in Santa Barbara County, California.

4 8. Whenever in this Complaint reference is made to any act, deed, or conduct of
5 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
6 through one or more of its agents, employees, or representatives, who was actively engaged in the
7 management, direction, control, or transaction of the business and affairs of Defendants.

8 9. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
9 associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and
10 therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiff will
11 amend this Complaint to insert the true names and capacities of the Doe Defendants at such time
12 as the identities of the Doe Defendants are ascertained.

13 10. Plaintiff is informed and believes, and based thereon alleges, that the Doe
14 Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each
15 other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged
16 directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and
17 accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable
18 to the extent of the liability of Defendants as alleged herein.

19 11. Plaintiff is further informed and believe, and thereon allege, that at all times herein
20 material, each Defendant was completely dominated and controlled by its co-Defendant(s) and
21 each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to
22 any conduct by Defendants, or any of them, such allegations and references shall also be deemed
23 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
24 Whenever and wherever reference is made to individuals who are not named as defendants in this
25 Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times
26 acted on behalf of Defendants named in this Complaint within the scope of their respective
27 employment or agency with Defendants.

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1 **FIRST COUNT**

2 **Failure to Pay Minimum Wages Owed**

3 **(By Plaintiff against All Defendants)**

4 12. Plaintiff incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 13. Section 1197 provides that “[t]he minimum wage for employees fixed by the
7 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
8 and the payment of a lower wage than the minimum so fixed is unlawful.” “(1) For any employer
9 who employs 26 or more employees, the minimum wage shall be as follows: ... From January 1,
10 2021, to December 31, 2021, inclusive,—fourteen dollars (\$14) per hour. (F) From January 1,
11 2022, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.” Cal. Lab. Code, §
12 1182.12, subd. (b).

13 14. Pursuant to Section 1197.1, “(a) Any employer or other person acting either
14 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
15 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
16 order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
17 damages payable to the employee, and any applicable penalties imposed pursuant to Section 203
18 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
19 for each underpaid employee for each pay period for which the employee is underpaid. This
20 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
21 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section
22 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars
23 (\$250) for each underpaid employee for each pay period for which the employee is underpaid
24 regardless of whether the initial violation is intentionally committed. This amount shall be in
25 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to
26 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.”

27 15. Employer operated an egg production establishment in Kern County. Ms.
28 Gonzalez worked at the Employer’s facility in Wasco, CA. Ms. Gonzalez’s supervisor, Enrique

1 Galvan, specifically told her there was a rule, coming from upper management, that Employees
2 were not able to leave the employer's premises during their meal breaks. The Employer explained
3 that it was concerned of liability if Employees were to get involved in accidents during their meal
4 periods. Employer also wanted Employees to remain available to work, on call as needed during
5 meal periods. Employer failed to pay for Employees' meal periods, although the employer
6 exercised control over Employees during their meal periods, qualifying that time as "hours
7 worked" for which Employees were required to be paid at least minimum wage.

8 16. Additionally, the Employer required Employees to perform work before and after
9 their scheduled shifts, without paying them for this time. For example, when Ms. Gonzalez would
10 arrive early at the worksite and attempt to wait in her car, the Employer (supervisor) would arrive
11 and say "what are you doing, get to work!," even though it was up to 15 minutes before Ms.
12 Gonzalez's scheduled start time. The Employer's rule was that Employees must arrive early and
13 get to work immediately, even if it means performing 15 minutes or more work off the clock,
14 unpaid.

15 17. The Employer was also aware of Employees, including Ms. Gonzalez, regularly
16 performing work after their scheduled end time, of which her supervisors were well aware (they
17 were present). Ms. Gonzalez attempted to claim this extra time, explaining for example on one
18 occasion that the end-of-shift cleaning duties required working 30 minutes after her shift ended,
19 but her supervisor accused Ms. Gonzalez of lying and refused to pay for the extra time.

20 18. As a result of the foregoing, Employer violated California's minimum wage laws
21 and is subject to civil penalties.

22 19. As a result of the foregoing, Employer violated California's minimum wage laws
23 and is subject to civil penalties.

24 **SECOND COUNT**

25 **Failure to Provide Compliant Meal Periods or Pay Meal Premiums**

26 **(By Plaintiff against All Defendants)**

27 20. Plaintiff incorporates by reference and realleges each and every allegation
28 contained above, as though fully set forth herein.

1 21. “An employer may not employ an employee for a work period of more than five
2 hours per day without providing the employee with a meal period of not less than 30 minutes,
3 except that if the total work period per day of the employee is no more than six hours, the meal
4 period may be waived by mutual consent of both the employer and employee. An employer may
5 not employ an employee for a work period of more than 10 hours per day without providing the
6 employee with a second meal period of not less than 30 minutes, except that if the total hours
7 worked is no more than 12 hours, the second meal period may be waived by mutual consent of the
8 employer and the employee only if the first meal period was not waived.” Cal. Lab. Code, § 512,
9 subd. (a).

10 22. Pursuant to Labor Code sections 226.7 and 512, and Wage Order 14, duty-free
11 meal periods of no less than thirty (30) minutes are required for all non-exempt employees who
12 work at least five (5) hours in a work period per day. The employee must be free to leave the
13 employer’s premises. An employer may not employ an employee for a work period of more than
14 10 hours per day without providing the employee with a second meal period of not less than 30
15 minutes. Time records of meal periods must be kept. Meal periods must be paid when the
16 employee is not relieved of all duties or free to leave the premises. An employer who fails to
17 provide a duty-free meal period must pay the employee an additional one (1) hour regular pay for
18 each day in which a duty-free meal period is not provided.

19 23. “If an employer fails to provide an employee a meal or rest or recovery period in
20 accordance with a state law, including, but not limited to, an applicable statute or applicable
21 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
22 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
23 pay the employee one additional hour of pay at the employee’s regular rate of compensation for
24 each workday that the meal or rest or recovery period is not provided.” Cal. Lab. Code, § 226.7,
25 subd. (c).

26 24. “Any employer or other person acting on behalf of an employer who violates, or
27 causes to be violated, a section of this chapter or any provision regulating hours and days of work
28 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

1 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
2 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
3 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
4 employee for each pay period for which the employee was underpaid in addition to an amount
5 sufficient to recover underpaid wages.” Cal. Lab. Code, § 558, subd. (a).

6 25. Although Employees were entitled to a meal period within the first five (5) hours of
7 work, Employer regularly provided first meal periods after such time. Ms. Gonzalez’s supervisor
8 scheduled Employees’ meal periods based on the time of deliveries for the particular day. Based
9 on the timing of those deliveries, Ms. Gonzalez’s supervisor regularly pushed Employees’ meal
10 periods to occur past the five-hour mark. The meal periods provided to Employees were also
11 noncompliant because Employer’s supervisors informed Employees they were not free to leave the
12 worksite during their meal periods. Rather, Employees were required to stay onsite because, for
13 example in Ms. Gonzalez’s case, Employer wanted Employees to remain available to work, on
14 call as needed. It was for that reason that meal periods were regularly interrupted or cut short. For
15 these reasons, Employer violated Section 226.7.

16 26. Defendants are subject to all civil penalties and other remedies under the PAGA.

17 **THIRD COUNT**

18 **Inaccurate Wage Statements**

19 **(By Plaintiff against All Defendants)**

20 27. Plaintiff incorporates by reference and realleges each and every allegation
21 contained above, as though fully set forth herein.

22 28. “An employer, semimonthly or at the time of each payment of wages, shall furnish
23 to his or her employee, either as a detachable part of the check, draft, or voucher paying the
24 employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized
25 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
26 except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable
27 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
28 deductions made on written orders of the employee may be aggregated and shown as one item, (5)

net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee....” Cal. Lab. Code, § 226, subd. (a).

29. “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.” Cal. Lab. Code, § 226.3.

30. Employer failed to furnish Employees with accurate itemized statements at the time of each payment of wages showing all deductions, the correct gross wages earned, correct total hours worked, correct net wages earned, and the corresponding correct number of hours worked at each applicable hourly rate. Employees' wage statements also failed to reflect all premium wages owed for the violations of Section 226.7. In addition, the Employer failed to list its address on wage statements, listing instead the location of a Wasco, CA post office. Consequently, Employer failed to provide Employees accurate itemized wages statements as required by Section 226.

31. Defendants are subject to all civil penalties and other remedies under the PAGA.

FOURTH COUNT

Untimely Payment of Wages

(By Plaintiff against All Defendants)

32. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

1 33. Generally, “[a]ll wages, other than those mentioned in Section 201, 201.3, 202,
2 204.1, or 204.2, earned by any person in any employment are due and payable twice during each
3 calendar month, on days designated in advance by the employer as the regular paydays. Labor
4 performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
5 between the 16th and the 26th day of the month during which the labor was performed, and labor
6 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
7 between the 1st and 10th day of the following month.” Cal. Lab. Code, § 204, subd. (a).

8 34. Generally, “[l]abor performed by a weekly-paid employee during any calendar
9 week and prior to or on the regular payday shall be paid for not later than the regular payday of the
10 employer for such weekly-paid employee falling during the following calendar week. Labor
11 performed by a weekly-paid employee during any calendar week and subsequent to the regular
12 payday shall be paid for not later than seven days after the regular payday of the employer for such
13 weekly-paid employee falling during the following calendar week.” Cal. Lab. Code, § 204b.

14 35. Special rules govern agricultural employees, however: “All wages, other than those
15 mentioned in Sections 201 and 202, earned by any agricultural employee, as defined in Section
16 1140.4, are due and payable twice during each calendar month, on days designated in advance by
17 the agricultural employer as the regular paydays. Labor performed between the 1st and the 15th
18 days, inclusive, of any calendar month shall be paid between the 16th and the 22nd day of the
19 month during which the labor was performed. Labor performed between the 16th and the last day,
20 inclusive, of any calendar month shall be paid between the first and the seventh day of the
21 following month.” Cal. Lab. Code, § 205.5.

22 36. “In addition to, and entirely independent and apart from, any other penalty
23 provided in this article, every person who fails to pay the wages of each employee as provided in
24 Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty
25 as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
26 employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred
27 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
28 withheld.” Cal. Lab. Code, § 210, subd. (a).

1 37. Rather than timely paying Employees all wages due within the periods set forth
2 above, throughout the Statutory Period, Employer failed to timely pay Employees for all wages
3 owed.

4 38. Defendants are subject to all civil penalties and other remedies under the PAGA.

5 **FIFTH COUNT**

6 **Failure to Pay Wages at Termination**

7 **(By Plaintiff against All Defendants)**

8 39. Plaintiff incorporates by reference and realleges each and every allegation
9 contained above, as though fully set forth herein.

10 40. “If an employer discharges an employee, the wages earned and unpaid at the time
11 of discharge are due and payable immediately.” Cal. Lab. Code, § 201, subd. (a). “If an employer
12 willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3,
13 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the
14 wages of the employee shall continue as a penalty from the due date thereof at the same rate until
15 paid or until an action therefor is commenced; but the wages shall not continue for more than 30
16 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or
17 who refuses to receive the payment when fully tendered to him or her, including any penalty then
18 accrued under this section, is not entitled to any benefit under this section for the time during
19 which he or she so avoids payment.” Cal. Lab. Code, § 203, subd. (a).

20 41. Throughout the Statutory Period, Employer failed to pay Employees all wages.
21 These wages were owed and due to Employees at the time of their discharge, or within the
22 statutorily prescribed time after Employees’ resignation. Employer did not provide these
23 payments to Employees at the time of termination or within a sufficient time of resignation as
24 required by law. Employer’s failure to timely pay these wages at the time of termination, and
25 failure to pay Employees’ continued wages for the 30-day period thereafter, constitutes a violation
26 of Sections 201 and 203.

27 42. Defendants are subject to all civil penalties and other remedies under the PAGA.

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SIXTH COUNT

**Failure to Pay Wages at Termination
(By Plaintiff against All Defendants)**

43. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

44. “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code, § 201, subd. (a). “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.” Cal. Lab. Code, § 203, subd. (a).

45. Throughout the Statutory Period, Employer failed to pay Employees all premium wages. These wages were owed and due to Employees at the time of their discharge, or within the statutorily prescribed time after Employees’ resignation. Employer did not provide these payments to Employees at the time of termination or within a sufficient time of resignation as required by law. Employer’s failure to timely pay these wages at the time of termination, and failure to pay Employees’ continued wages for the 30-day period thereafter, constitutes a violation of Sections 201 and 203.

46. Defendants are subject to civil penalties as provided by law.

SEVENTH COUNT

**Failure to Maintain Meal Period Records
(By Plaintiff against All Defendants)**

47. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

48. “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Lab. Code, § 1198.

49. Pursuant to Industrial Welfare Commission Wage Order 14(7), “[e]very employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods ... shall also be recorded.”

50. By failing to record the Employees' meal periods, Employer violated Wage Order 14. Employees' time records indicate no clock-in/out for the on-duty meal periods they took. Accordingly, in addition to the other violations laid out above, the Employer also violated Section 1198.

51. Defendants are subject to civil penalties as provided by law.

PRAYER

WHEREFORE, Plaintiff and Employees pray for judgment against Defendants, as follows:

1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount to be ascertained at trial exceeding \$25,000.

2. For reasonable costs and attorneys' fees; and

3. For such other and further relief as the Court deems proper.

DATED: May 25, 2022

WORKWORLD LAW CORP.
A Professional Corporation

By: RUBEN ESCOBEDO
Attorneys for MARIA L. GONZALEZ
as Private Attorney General