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10 *Attorneys for Plaintiff FELISA COVARRUBIAS GONZALEZ,*
11 *Individually and on behalf of all others similarly situated*

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE – UNLIMITED CIVIL JURISDICTION

FELISA COVARRUBIAS GONZALEZ,
both individually and as class representative
on behalf of herself and all other similarly
situated non-exempt current and former
employees,

Plaintiff,

vs.

CASE VANDER EYK DAIRY, LLC, a
California Sole Proprietorship; CASE
VANDER EYK JR. DAIRY, LLC, a
California Sole Proprietorship; DAVID
VANDER EYK DAIRY, LLC, a California
Sole Proprietorship; CASE VANDER EYK,
dba CASE VANDER EYK DAIRY, a Sole
Proprietorship; DAVID VANDER EYK,
dba DAVID VANDER EYK DAIRY, a Sole
Proprietorship; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: VCU293120

Assigned For All Purposes:
Hon. David C. Mathias

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

1. FAILURE TO PROVIDE REQUIRED MEAL PERIODS
2. FAILURE TO PROVIDE REQUIRED REST AND RECOVERY PERIODS
3. FAILURE TO PAY OVERTIME WAGES
4. FAILURE TO PAY MINIMUM WAGE
5. FAILURE TO TIMELY PAY WAGES
6. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUITTING EMPLOYEES
7. FAILURE TO MAINTAIN REQUIRED RECORDS
8. FAILURE TO FURNISH ACCURATE ITEMIZED STATEMENTS
9. FAILURE TO PRODUCED EMPLOYEE RECORDS UPON DEMAND
10. UNFAIR AND UNLAWFUL BUSINESS PRACTICES
11. PRIVATE ATTORNEYS GENERAL ACT OF 2004

*****DEMAND FOR JURY TRIAL*****

1 Plaintiff FELISA COVARRUBIAS GONZALEZ ("PLAINTIFF"), both individually and
2 as a class representative on behalf of herself and all other similarly situated non-exempt current
3 and former employees, hereby allege as follows:

4 **JURISDICTION AND VENUE**

5 1. The Superior Court of the State of California has jurisdiction in this matter
6 because PLAINTIFF was and is a resident of the State of California, Defendants CASE
7 VANDER EYK dba CASE VANDER EYK DAIRY ("CVR"), a California Sole Proprietorship;
8 DAVID VANDER EYK dba DAVID VANDER EYK DAIRY ("DVE"), a California Sole
9 Proprietorship; and DOES 1 through 10, inclusive (collectively, "DEFENDANTS") are qualified
10 to do business in California and regularly conduct business in California. Further, no federal
11 question is at issue because the claims are based solely on California law.

12 2. Venue is proper in this judicial district and the COUNTY OF TULARE,
13 California because PLAINTIFF, and other persons similarly situated, performed work for
14 DEFENDANTS in the COUNTY OF TULARE, DEFENDANTS maintain offices and facilities
15 and transact business in the COUNTY OF TULARE, and DEFENDANTS' illegal payroll
16 policies and practices, which are the subject of this action, were applied, at least in part, to
17 PLAINTIFF, and other persons similarly situated, in the COUNTY OF TULARE. Further, the
18 amount in controversy exceeds the sum of \$25,000.00, exclusive of interest and costs.

19 **PLAINTIFF**

20 3. PLAINTIFF FELISA COVARRUBIAS GONZALEZ ("COVARRUBIAS" or
21 "PLAINTIFF" or "Plaintiff") is a resident of the State of California who was employed by
22 DEFENDANTS CASE VANDER EYK dba CASE VANDER EYK DAIRY ("CVE"), DAVID
23 VANDER EYK dba DAVID VANDER EYK DAIRY ("DVE"), and DOES 1 through 10
24 (collectively all Defendants referred to as "DEFENDANT(S)" or "Defendant(s)"), as a non-
25 exempt employee at times relevant to this Complaint.

26 4. PLAINTIFF, on behalf of herself and all other similarly situated current and
27 former non-exempt employees of DEFENDANTS who were employed by DEFENDANTS at
28 any time during the four (4) years preceding the filing of this complaint, and continuing while

1 this action is pending, bring this class action to recover, among other things, wages and penalties
2 from unpaid wages earned and due, including but not limited to unpaid minimum wages and
3 unpaid wages, unpaid and illegally calculated overtime compensation, illegal meal and rest
4 period policies, failure to timely pay wages, failure to pay all wages due to discharged or quitting
5 employees, failure to maintain required records, failure to provide accurate itemized wage
6 statements, failure to produce employment records upon demand, and interest, attorneys' fees,
7 costs, and expenses.

8 5. Plaintiff brings this action on behalf of herself and the following similarly situated
9 class of individuals ("CLASS MEMBERS"): All current and former non-exempt employees of
10 DEFENDANTS who worked at any of DEFENDANTS' locations in the State of California at
11 any time within the period beginning four (4) years prior to the filing of the this action, and
12 ending at the time this action settles or proceeds to final judgment (the "CLASS PERIOD").

13 6. PLAINTIFF reserves the right to name additional class representatives, change
14 the definition of class members, and/or change the class period.

15 **DEFENDANTS**

16 7. Plaintiff is informed and believes, and thereon alleges, that Defendant CASE
17 VANDER EYK dba CASE VANDER EYK DAIRY ("CVE"), a California Sole Proprietorship,
18 is, and at all times relevant hereto was, a company authorized to do business in the State of
19 California and doing business in the State of California. Specifically, upon information and
20 belief, Defendant CVE conducts business in the COUNTY OF TULARE, State of California.

21 8. Plaintiff is informed and believes, and thereon alleges, that Defendant DAVID
22 VANDER EYK dba DAVID VANDER EYK DAIRY ("DVE"), a California Sole
23 Proprietorship, is, and at all times relevant hereto was, a company authorized to do business in
24 the State of California and doing business in the State of California. Specifically, upon
25 information and belief, Defendant DVE conducts business in the COUNTY OF TULARE, State
26 of California.

27 9. The true names and capacities of DOES 1 through 10, inclusive, are unknown to
28 PLAINTIFF at this time, and PLAINTIFF therefore sue such DOE Defendants under fictitious

1 names. Plaintiff is informed and believes, and thereon alleges, that each Defendant designated as
2 a DOE is in some manner responsible for the occurrences alleged herein, and that PLAINTIFF
3 and CLASS MEMBERS' injuries and damages, as alleged herein, were proximately caused by
4 the conduct of such DOE Defendants. PLAINTIFF will seek leave of the court to amend this
5 complaint to allege the true names and capacities of such DOE Defendants when ascertained.

6 10. At all relevant times herein, DEFENDANTS were the joint employers of
7 PLAINTIFF and the CLASS MEMBERS. Plaintiff is informed and believes, and thereon
8 alleges, that at all times material to this complaint DEFENDANTS, as categorized above, were
9 the alter egos, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents,
10 principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or
11 guarantors, actual or ostensible, of each other. Each DEFENDANT, as categorized above, was
12 completely dominated by his, her or its co-DEFENDANT, and each was the alter ego of the
13 other. Each DEFENDANT is also a joint employer per California Labor Code Sections 2810,
14 2810.3, 2810.4 and 2810.5.

15 11. At all relevant times herein, PLAINTIFF and CLASS MEMBERS were employed
16 by DEFENDANTS under employment agreements that were partly written, partly oral, and
17 partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each
18 of them, acted pursuant to, and in furtherance of, their policies and practices of not paying
19 PLAINTIFF and CLASS MEMBERS all wages earned and due, through methods and schemes
20 which include, but are not limited to, failing to pay overtime premiums; failing to provide rest,
21 recovery, and meal periods; failing to properly maintain records; failing to provide accurate
22 itemized statements for each pay period; failing to properly compensate PLAINTIFF and CLASS
23 MEMBERS for necessary expenditures; and requiring, permitting or suffering PLAINTIFF and
24 CLASS MEMBERS to work off the clock, in violation of the California Labor Code and the
25 applicable IWC Wage Order.

26 12. Plaintiff is informed and believes, and thereon alleges, that each and every one of
27 the acts and omissions alleged herein was performed by, and/or attributable to, all
28 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control

1 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
2 and scope of said agency, employment and/or direction and control.

3 13. As a direct and proximate result of the unlawful actions of DEFENDANTS,
4 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of
5 earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction
6 of this Court.

7 **CLASS ACTION ALLEGATIONS**

8 13. This action is appropriately suited for a class action because:

9 A. The potential class is a significant number. Joinder of all current and
10 former employees individually would be impractical.

11 B. This action involves common questions of law and fact to the potential
12 class because the action focuses on DEFENDANTS' systematic course of illegal payroll
13 practices and policies, which was applied to all non-exempt employees in violation of the
14 California Labor Code, IWC Wage Orders, and the California Business and Professions Code
15 which prohibits unfair and unlawful business practices arising from such violations.

16 C. The claims of PLAINTIFF are typical of the class because
17 DEFENDANTS subjected all non-exempt employees to identical violations of the California
18 Labor Code, the applicable IWC wage order, and the California Business and Professions Code.

19 D. PLAINTIFF are able to fairly and adequately protect the interests of all
20 CLASS MEMBERS because it is in their best interest to prosecute the claims alleged herein to
21 obtain full compensation due to the CLASS MEMBERS for all services rendered and hours
22 worked.

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1 **FIRST CAUSE OF ACTION**

2 **Failure to Provide Required Meal Periods**

3 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order Nos. 8, 13, and 14, § 11]**

4 **(Against all DEFENDANTS)**

5 14. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
6 the allegations in all preceding paragraphs.

7 15. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
8 and practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
9 required, permitted or otherwise suffered PLAINTIFF and CLASS MEMBERS to take less than
10 the 30-minute meal period, or to work through them, and have failed to otherwise provide the
11 required meal periods to PLAINTIFF and CLASS MEMBERS pursuant to California Labor
12 Code § 226.7, 512 and the applicable IWC Orders.

13 16. Additionally, when PLAINTIFF and CLASS MEMBERS worked shifts in excess
14 of ten (10) hours, they were not provided with a required second uninterrupted meal break of 30
15 minutes. Regardless of the length of a scheduled shift, PLAINTIFF and CLASS MEMBERS
16 were only provided with one (1) meal break, which was typically interrupted or cut short.

17 17. DEFENDANTS further violated California Labor Code §§ 226.7 and the
18 applicable IWC Wage Orders by failing to compensate PLAINTIFF and CLASS MEMBERS
19 who were not provided with a meal period, in accordance with the applicable wage order, one
20 additional hour of compensation at each employee's regular rate of pay for each workday that a
21 meal period was not provided.

22 18. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194,
23 1197, and the applicable IWC Wage Orders by failing to compensate PLAINTIFF and CLASS
24 MEMBERS for all hours worked during their meal periods.

25 19. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
26 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages
27 earned and due, interest, penalties, expenses, and costs of suit.

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1 **SECOND CAUSE OF ACTION**

2 **Failure to Provide Required Rest and Recovery Periods**

3 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order Nos. 8, 13, and 14, § 12]**

4 **(Against all DEFENDANTS)**

5 20. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
6 the allegations in all preceding paragraphs.

7 21. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies
8 and practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
9 failed to provide rest and recovery periods to PLAINTIFF and CLASS MEMBERS as required
10 under California Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders. This
11 includes not providing water, shade and restroom facilities to employees on the work fields.

12 22. Additionally, DEFENDANTS generally only provided PLAINTIFF and CLASS
13 MEMBERS with one (1) rest break per shift, regardless of the length of shift. Moreover, this
14 one (1) break was often interrupted or cut short due DEFENDANTS' work requirements and
15 requests.

16 23. DEFENDANTS further violated California Labor Code § 226.7 and the
17 applicable IWC Wage Orders by failing to pay PLAINTIFF and CLASS MEMBERS who were
18 not provided with a rest and recovery periods, in accordance with the applicable wage order, one
19 additional hour of compensation at each employee's regular rate of pay for each workday that a
20 rest period was not provided.

21 24. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
22 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages
23 earned and due, interest, penalties, expenses, and costs of suit.

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1 **THIRD CAUSE OF ACTION**

2 **Failure to Pay Overtime Wages**

3 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order Nos. 8, 13, and 14, § 3]**

4 **(Against all DEFENDANTS)**

5 25. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
6 the allegations in all preceding paragraphs.

7 26. Pursuant to California Labor Code §§ 510, 1194, and the applicable IWC Wage
8 Orders, DEFENDANTS are required to compensate PLAINTIFF and CLASS MEMBERS for all
9 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
10 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first
11 eight (8) hours on the seventh consecutive workday, with double time for all hours worked in
12 excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours
13 on the seventh consecutive day of work in any workweek.

14 27. PLAINTIFF and CLASS MEMBERS are current and former non-exempt
15 employees entitled to the protections of California Labor Code §§ 510, 1194, and the applicable
16 IWC Wage Orders. During the CLASS PERIOD, DEFENDANTS failed to compensate
17 PLAINTIFF and CLASS MEMBERS for all overtime hours worked as required under the
18 foregoing provisions of the California Labor Code and IWC Wage Order by, among other things:
19 failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by
20 California Labor Code §§ 510, 1194, and the applicable IWC Wage Orders; requiring, permitting
21 or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring, permitting or
22 suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest breaks; illegally
23 and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS worked; illegally
24 rounding the work hours of PLAINTIFF and CLASS MEMBERS; failing to properly maintain
25 PLAINTIFF' and CLASS MEMBERS' records; failing to provide accurate itemized wage
26 statements to PLAINTIFF and CLASS MEMBERS for each pay period; and other methods to be
27 discovered.

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1 28. In violation of California law, DEFENDANTS have knowingly and willfully
2 refused to perform their obligations to compensate PLAINTIFF and CLASS MEMBERS for all
3 wages earned and all hours worked. As a proximate result, PLAINTIFF and CLASS
4 MEMBERS have suffered, and continue to suffer, substantial losses related to the use and
5 enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in
6 seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their
7 respective damages in amounts according to proof at time of trial, and within the jurisdiction of
8 this Court.

9 29. DEFENDANTS' conduct described herein violates California Labor Code §§
10 510, 1194, 1198 and IWC Wage Orders. Therefore, pursuant to California Labor Code §§ 200,
11 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code
12 and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled to recover the unpaid
13 balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees,
14 expenses, and costs of suit.

15 **FOURTH CAUSE OF ACTION**

16 **Failure to Pay Minimum Wages**

17 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order Nos. 8, 13, and 14, § 4]**

18 **(Against all DEFENDANTS)**

19 30. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
20 the allegations in all preceding paragraphs.

21 31. Pursuant to California Labor Code §§ 1194, 1197, and the applicable IWC Wage
22 Orders, payment to an employee of less than the applicable minimum wage for all hours worked
23 in a payroll period is unlawful.

24 32. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and
25 CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring,
26 permitting or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring,
27 permitting or suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest
28 breaks; illegally and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS

1 worked; illegally rounding the work hours of PLAINTIFF and CLASS MEMBERS; failing to
2 properly maintain PLAINTIFF' and CLASS MEMBERS' records; failing to provide accurate
3 itemized wage statements to PLAINTIFF and CLASS MEMBERS for each pay period; and
4 other methods to be discovered.

5 33. DEFENDANTS' conduct described herein violates California Labor Code §§
6 1194, 1197, and the applicable IWC Wage Orders. As a proximate result of the aforementioned
7 violations, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
8 proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1,
9 and other applicable provisions under the Labor Code and IWC Wage Orders, PLAINTIFF and
10 CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to them by
11 DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

12 **FIFTH CAUSE OF ACTION**

13 **Failure to Timely Pay Wages During Employment**

14 **[Cal. Labor Code § 204]**

15 **(Against All DEFENDANTS)**

16 34. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
17 the allegations in all preceding paragraphs.

18 35. Pursuant to California Labor Code § 204, for all labor performed between the 1st
19 and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt
20 employees between the 16th and 26th day of the month during which the labor was performed.
21 California Labor Code § 204 also provides that for all labor performed between the 16th and 26th
22 days of any calendar month, DEFENDANTS are required to pay their nonexempt employees
23 between the 1st and 10th day of the following calendar month. In addition, California Labor Code
24 § 204 provides that all wages earned for labor in excess of the normal work period shall be paid
25 no later than the payday of the next regular payroll period.

26 36. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to
27 pay PLAINTIFF and CLASS MEMBERS all the wages they earned when due as required by
28 California Labor Code § 204. For example, PLAINTIFF, on occasion, would forget to clock-in

1 when returning from a meal break. When this occurred, PLAINTIFF would inform their
2 supervisors of the error, and said supervisors would assure PLAINTIFF that they would
3 manually correct the time punch so that PLAINTIFF would be compensated for the time they
4 accidentally worked "off-the-clock." However, PLAINTIFF noticed that these corrections were
5 never made by DEFENDANTS, resulting in known under compensation.

6 37. Pursuant to California Labor Code § 210, failure to pay the wages of each
7 employee as provided in California Labor Code § 204 will subject DEFENDANTS to a civil
8 penalty of: (1) one hundred dollars (\$100) for each failure to pay each employee for each initial
9 violation; and (2) two hundred dollars (\$200) for each failure to pay each employee, plus twenty-
10 five percent (25%) of the amount unlawfully withheld, for each subsequent violation.

11 38. DEFENDANTS' conduct described herein violates California Labor Code § 204.
12 As a proximate result of the aforementioned violations, PLAINTIFF and CLASS MEMBERS
13 have been damaged in an amount according to proof at trial. Therefore, pursuant to California
14 Labor Code §§ 200, 210, 226, 558, 1194, 1197.1, 2699, and other applicable provisions under
15 the Labor Code and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled to
16 recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties,
17 attorneys' fees, expenses, and costs of suit.

18 **SIXTH CAUSE OF ACTION**

19 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

20 **[Cal. Labor Code §§ 201, 202, 203]**

21 **(Against all DEFENDANTS)**

22 39. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
23 the allegations in all preceding paragraphs.

24 40. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are
25 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
26 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued
27 and unpaid at the time of discharge are due and payable immediately.

28 41. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are

1 required to pay all accrued wages due to an employee no later than 72 hours after the employee
2 quits his or her employment, unless the employee provided 72 hours previous notice of his or her
3 intention to quit, in which case the employee is entitled to his or her wages at the time of
4 quitting.

5 42. California Labor Code § 203 provides that if an employer willfully fails to pay, in
6 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
7 discharged or who quits, the employer is liable for waiting time penalties in the form of
8 continued compensation to the employee at the same rate for up to 30 workdays.

9 43. As noted above, during the CLASS PERIOD, DEFENDANTS have willfully
10 failed to pay accrued wages and other compensation, including meal and rest break premiums
11 to PLAINTIFF and CLASS MEMBERS in accordance with California Labor Code §§ 201, 202,
12 and 203.

13 44. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available
14 statutory penalties, including the waiting time penalties provided in California Labor Code §
15 203, together with interest thereon, as well as other available remedies.

16 45. As a proximate result of DEFENDANTS' unlawful actions and omissions,
17 PLAINTIFF and CLASS MEMBERS have been deprived of compensation in an amount
18 according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are
19 entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs,
20 pursuant to California Labor Code §§ 1194 and 2699.

21 **SEVENTH CAUSE OF ACTION**

22 **Failure to Maintain Required Records**

23 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order Nos. 8, 13, and 14, § 7]**

24 **(Against all DEFENDANTS)**

25 46. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
26 the allegations in all preceding paragraphs.

27 47. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
28 and practices to deprive PLAINTIFF and CLASS MEMBERS of all wages earned and due,

1 DEFENDANTS knowingly and intentionally failed to maintain records as required under
2 California Labor Code §§ 226, 1174, and the applicable IWC Wage Orders, including but not
3 limited to the following records: total daily hours worked by each employee; applicable rates of
4 pay; all deductions; meal periods; time records showing when each employee begins and ends
5 each work period; and accurate itemized statements.

6 48. As a proximate result of DEFENDANTS' unlawful actions and omissions,
7 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at
8 trial, and are entitled to all wages earned and due, plus interest thereon. Additionally,
9 PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties, including
10 but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5,
11 and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to
12 those provided in California Labor Code § 226(e), as well as other available remedies.

13 **EIGHTH CAUSE OF ACTION**

14 **Failure to Furnish Accurate Itemized Wage Statements**

15 **[Cal. Labor Code §§ 226; IWC Wage Order Nos. 8, 13, and 14, § 7]**

16 **(Against all DEFENDANTS)**

17 49. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
18 the allegations in all preceding paragraphs.

19 50. During the CLASS PERIOD, DEFENDANTS routinely failed to provide
20 PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage statements in
21 writing showing each employee's gross wages earned, total hours worked, all deductions made,
22 net wages earned, the inclusive dates of the period for which the employee is paid, the name and
23 address of the legal entity or entities employing PLAINTIFF and CLASS MEMBERS, and all
24 applicable hourly rates in effect during each pay period and the corresponding number of hours
25 worked at each hourly rate, in violation of California Labor Code § 226 and the applicable IWC
26 Wage Orders.

27 51. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed
28 to provide PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage

1 statements in accordance with California Labor Code § 226(a).

2 52. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF
3 and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek
4 all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and CLASS
5 MEMBERS are entitled to all available statutory penalties, including but not limited to civil
6 penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs,
7 expenses, and reasonable attorneys' fees, including but not limited to those provided in
8 California Labor Code § 226(e), as well as other available remedies.

9 **NINTH CAUSE OF ACTION**

10 **Failure to Provide Employment Records Upon Demand**

11 **[Cal. Labor Code §§ 226 et seq. and 1198.5 et seq.]**

12 **(Against all DEFENDANTS)**

13 53. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
14 the allegations in all preceding paragraphs.

15 54. PLAINTIFF ABARCA and MAYO DE JESUS, on or around February 4, 2022,
16 by and through their attorneys of record, served upon DEFENDANTS, via Certified U.S. Mail,
17 Formal Request for Employment and Payroll Records, pursuant to Labor Code section 226 et
18 seq. and 1198.5 et seq. As of the date of filing this complaint, no records have been produced or
19 made available for inspection by Defendants.

20 55. At all times mentioned, California Labor Code section 226(c) reads as follows:

21 An employer who receives a written or oral requires to inspect or copy records
22 pursuant to subdivision (b) pertaining to a current or former employee shall comply
23 with the request as soon as practicable, but no later than 21 calendar days from the
24 date of the request. A violation of this subdivision is an infraction.

25 56. Further, Labor Code section 226(f) reads in relevant part as follows:

26 A failure by an employer to permit a current or former employee to inspect or copy
27 records within the time set forth in subdivision (c) entitles the current or former
28 employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750)

1 penalty from the employer.

2 57. Further, Labor Code section 226(h) reads in relevant part as follows:

3 An employee may also bring an action for injunctive relief to ensure compliance with
4 this section, and is entitled to an award of costs and reasonable attorney's fees.

5 58. Therefore, per the statute, PLAINTIFF are entitled to injunctive relieve and a
6 \$750.00 penalty for failing to comply with the code. Further, PLAINTIFF are entitled to costs
7 and reasonable attorneys' fees.

8 59. At all times mentioned, California Labor Code section 1198.5(b) reads as follows:

9 The employer shall make the contents of those personnel records available for
10 inspection to the current or former employee, or his or his representative, at reasonable
11 intervals and at reasonable times, but not later than 30 calendar days from the date the
12 employer receives a written request..."

13 60. Further, Labor Code section 1198.5(l) reads in relevant part as follows:

14 A failure by an employer to permit a current or former employee to inspect or copy
15 records within the time set forth in subdivision (c) entitles the current or former
16 employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750)
17 penalty from the employer.

18 61. Further, Labor Code section 226(h) reads in relevant part as follows:

19 A current or former employee may also bring an action for injunctive relief to obtain
20 compliance with this section, and may recover costs and reasonable attorney's fees in
21 such an action.

22 62. Therefore, per the statute, PLAINTIFF is entitled to injunctive relief, two (2)
23 \$750.00 penalties for failing to comply with the aforementioned Labor Codes. Further,
24 PLAINTIFF is entitled to costs and reasonable attorneys' fees.

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1 **TENTH CAUSE OF ACTION**

2 **Unfair and Unlawful Business Practices**

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

4 **(Against all DEFENDANTS)**

5 63. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
6 the allegations in all preceding paragraphs.

7 64. Each and every one of DEFENDANTS' acts and omissions in violation of the
8 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but
9 not limited to DEFENDANTS' failure and refusal to provide required meal periods,
10 DEFENDANTS' failure and refusal to provide required rest periods, DEFENDANTS' failure
11 and refusal to pay overtime compensation, DEFENDANTS' failure and refusal to pay minimum
12 wages, DEFENDANTS' failure and refusal to furnish accurate itemized wage statements;
13 DEFENDANTS' failure and refusal to maintain required records, DEFENDANTS' failure and
14 refusal to indemnify PLAINTIFF and CLASS MEMBERS for necessary expenditures and/or
15 losses incurring in discharging their duties, constitutes an unfair and unlawful business practice
16 under California Business and Professions Code § 17200 et seq.

17 65. DEFENDANTS' violations of California wage and hour laws constitute a
18 business practice because DEFENDANTS' aforementioned acts and omissions were done
19 repeatedly over a significant period of time, and in a systematic manner, to the detriment of
20 PLAINTIFF and CLASS MEMBERS.

21 66. DEFENDANTS have avoided payment of wages, overtime wages, meal periods,
22 rest periods, and other benefits as required by the California Labor Code, the California Code of
23 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to
24 record, report, and pay the correct sums of assessment to the state authorities under the
25 California Labor Code and other applicable regulations.

26 67. As a result of DEFENDANTS' unfair and unlawful business practices,
27 DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the
28 expense of PLAINTIFF, CLASS MEMBERS, and members of the public. DEFENDANTS

1 should be made to disgorge their ill-gotten gains and to restore them to PLAINTIFF and CLASS
2 MEMBERS.

3 68. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFF and
4 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not
5 limited to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFF and
6 CLASS MEMBERS the wages and other compensation unlawfully withheld from them.
7 PLAINTIFF and CLASS MEMBERS are entitled to restitution of all monies to be disgorged
8 from DEFENDANTS in an amount according to proof at the time of trial, but in excess of the
9 jurisdiction of this Court.

10 **ELEVENTH CAUSE OF ACTION**

11 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**

12 **[Cal. Lab. Code § 2699, et. seq.]**

13 **(Against all DEFENDANTS)**

14 69. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
15 the allegations in all preceding paragraphs.

16 70. Plaintiff and similarly situated employees are "aggrieved employees" under
17 PAGA, as they were employed by DEFENDANTS during the applicable statutory period and
18 suffered one or more of the Labor Code violations set forth herein. Accordingly, they seeks to
19 recover on behalf of themselves and all other current and former aggrieved employees of
20 DEFENDANTS, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

21 71. Plaintiff and similarly situated employees seek to recover the PAGA civil
22 penalties through a representative action permitted by PAGA and the California Supreme Court
23 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA
24 claims is not required.

25 72. Plaintiff and similarly situated employees seek civil penalties pursuant to PAGA
26 for violations of the following Labor Code provisions:

27 a. failure to provide prompt payment of wages to Labor Code §§ 200, 201, 202, 203;

28 b. failure to provide accurate itemized wage statements to employees in violation of

1 Labor Code §§ 226(a), 1174, and 1174.5;

2 c. failure to provide meal and rest periods in violation of Wage Order No. 9 and Labor
3 Code §§ 226.7, 512, and 558;

4 d. failure to pay overtime wages in violation of Wage Order No. 9 and Labor Code §§
5 510, 558, 1194 and 1198;

6 e. failure to pay minimum wages in violation of Wage Order No. 9 and Labor Code §§
7 1182.12, 1194, and 1197;

8 f. failure to provide itemized wage statements to employees in violation of Labor Code
9 §§ 226(a); and failure to pay all wages twice during each calendar month on days
10 designated in advance by the employer as the regular paydays in violation of Labor
11 Code § 204;

12 g. Failure to Maintain Records in violation of Labor Code § 226 (c) and 1198.5.

13 73. With respect to violations of Labor Code § 226(a), Labor Code § 226.3 imposes a
14 civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250)
15 per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
16 employee for each subsequent violation of Labor Code § 226(a).

17 74. With respect to violations of Labor Code §§ 510, 512, Labor Code § 558 imposes
18 a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial
19 violations for each underpaid employee for each pay period for which the employee was
20 underpaid in addition to an amount sufficient to recover underpaid wages, and one hundred
21 dollars (\$100) for subsequent violations for each underpaid employee for each pay period for
22 which the employee was underpaid in addition to an amount sufficient to recover underpaid
23 wages. Moreover, Plaintiffs seeks civil penalties in the amount of unpaid wages owed to
24 aggrieved employees pursuant to Labor Code § 558(a)(3).

25 75. With respect to violations of Labor Code § 1174, Labor Code § 1174.5 imposes a
26 civil penalty of \$500.

27 76. Labor Code § 2699 et seq. imposes a civil penalty of one hundred dollars (\$100)
28 per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) pay

1 period, per aggrieved employee for subsequent violations for all Labor Code provisions for
2 which a civil penalty is not specifically provided, including Labor Code §§ 200, 201, 202, 203,
3 226, 226.7, 226.8, 350, 351, 1174, 1182.12, 1194, 1197, 1198, 1198.5 and 2802.

4 77. On May 25, 2022, PLAINTIFF gave written notice by certified mail of
5 DEFENDANTS' violations of various provisions of the California Labor Code as alleged in this
6 complaint to the Labor and Workforce Development Agency ("LWDA") and DEFENDANTS.

7 78. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
8 alleged violations after the notice sent by Plaintiff. See Cal. Lab. Code § 2699.3(a)(2)(A).

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF, individually and on behalf of all other persons similarly
3 situated, respectfully pray for relief against DEFENDANTS and DOES 1 through 10, inclusive,
4 and each of them, as follows:

- 5 1. For compensatory damages in an amount to be ascertained at trial;
- 6 2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well
7 as disgorged profits from the unfair and unlawful business practices of DEFENDANTS;
- 8 3. For meal and rest period compensation pursuant to California Labor Code § 226.7
9 and the applicable IWC Wage Orders;
- 10 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 11 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
12 violating the relevant provisions of the California Labor Code and the IWC Wager Orders, and
13 from engaging in the unlawful business practices complained of herein;
- 14 6. For waiting time penalties pursuant to California Labor Code § 203;
- 15 7. For statutory and civil penalties according to proof, including but not limited to all
16 penalties authorized by the California Labor Code §§ 210, 226.3, 226(e), 558, 1197.1, and 2699;
- 17 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor
18 Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable
19 provision providing for pre-judgment interest;
- 20 9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
21 218.5, 226 et seq., 1021.5, 1194, 1198.5, 2699, 2802, California Civil Code § 1021.5, and/or any
22 other applicable provisions providing for attorneys' fees and costs;
- 23 10. For declaratory relief;
- 24 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
25 Seventh, Eighth, and Tenth Causes of Action as a class action;
- 26 12. For an order appointing PLAINTIFF as class representatives, and PLAINTIFF'S
27 counsel as class counsel; and

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13. For such further relief that the Court may deem just and proper.

DATED: October 20, 2022

Respectfully submitted,

SOLOUKI | SAVOY, LLP

By:



SHOHAM J. SOLOUKI
GRANT JOSEPH SAVOY
Attorneys for Plaintiff
FELISA COVARRUBIAS GONZALEZ

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1 **DEMAND FOR JURY TRIAL**

2 PLAINTIFF, individually and on behalf of all other persons similarly situated, hereby
3 demand a jury trial with respect to all issues triable of right by jury.

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5 DATED: October 20, 2022

Respectfully submitted,

6 **SOLOUKI | SAVOY, LLP**

7
8 By: 

GRANT JOSEPH SAVOY

SHOHAM J. SOLOUKI

9 *Attorneys for Plaintiff FELISA COVARRUBIAS*
10 *GONZALEZ*