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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

JOSEFINA LEON TAPIA, as an individual
and on behalf of all employees similarly
situated,

Plaintiff,

v.

GEMPERLE EGG PACKING CO. INC. DBA
GEMPERLE FAMILY FARMS, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CV-25-001398

**Amended as a matter of right, pursuant to
Labor Code Section 2699.3(a)(2)(c)**

FIRST AMENDED COMPLAINT

1. Failure to Pay All Wages, Sick Pay and Vacation;
2. Failure to Provide Meal Periods;
3. Failure to Provide Rest Periods;
4. Failure to Keep Accurate Itemized Wage Statements;
5. Failure to Pay Wages Upon Termination of Employment;
6. Failure to Reimburse for Necessary Expenditures;
7. Unfair Business Practices; and
8. Violation of the Private Attorneys General Act, Labor Code sections 2698, *et seq*

DEMAND FOR JURY TRIAL

1 Plaintiff JOSEFINA LEON TAPIA (hereinafter referred to as “Plaintiff”) on behalf of
2 herself and all others similarly situated, and as representative of the State of California and the
3 Labor and Workforce Development Agency (“LWDA”), based upon facts that either have
4 evidentiary support or are likely to have evidentiary support after a reasonable opportunity for
5 further investigation and discovery, complains and alleges as follows:

6 **INTRODUCTION**

7 1. This is a class action brought on behalf of Plaintiff and the class she seeks to
8 represent (“Class” or “Class Members”). Class Members consist of all non-exempt, hourly-paid
9 employees currently and/or formerly employed by GEMPERLE EGG PACKING CO. INC. DBA
10 GEMPERLE FAMILY FARMS in the State of California during the Class Period. The term
11 “Class Period” is defined as four (4) years prior to the filing of this Complaint through the date
12 final judgment is entered. Plaintiff reserves the right to amend this Complaint to reflect a different
13 “Class Period” or “Class” as further discovery is conducted.

14 2. Plaintiff, individually and on behalf of the class she seeks to represent, seeks relief
15 against GEMPERLE EGG PACKING CO. INC. DBA GEMPERLE FAMILY FARMS
16 (“Defendant”) for Defendant’s failure to pay all wages due including minimum, regular and
17 overtime wages; failure to provide meal periods or compensation in lieu thereof; failure to provide
18 rest periods or compensation in lieu thereof; failure to provide accurate itemized wage statements
19 upon payment of wages; failure to reimburse for necessary expenditures; and failure to pay wages
20 of terminated or resigned employees; failure to provide proper paid sick leave and provide
21 accurate sick leave amount balance; failure to pay all vested, accrued vacation upon separation of
22 employment.

23 3. Plaintiff seeks equitable remedies in the form of declaratory relief and injunctive
24 relief, and relief under Business and Professions Code Section 17200 et seq. for unfair business
25 practices.

26 4. At all relevant times herein, Defendant has consistently maintained and enforced
27 against Plaintiff and Class the following unlawful practices and policies:
28

- (a) willfully refusing to pay Plaintiff and Class for all hours worked, including minimum, regular and overtime;
- (b) willfully refusing to permit Plaintiff and Class from taking meal periods or compensation in lieu thereof;
- (c) willfully refusing to permit Plaintiff and Class from taking rest periods or compensation in lieu thereof;
- (d) willfully refusing to maintain accurate records and to furnish to Plaintiff and Class accurate itemized wage statements upon payment of wages;
- (e) willfully refusing to compensate certain members of the Class wages due and owing at the time of Class Members' employment with Defendant ended;
- (f) willfully refusing to reimburse Plaintiff and Class for necessary expenditures; and
- (g) willfully refusing to provide proper paid sick leave and written notice of paid sick leave and pay accrued vacation.

5. On information and belief, Defendant was on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendant's violations, as alleged above, during all relevant times herein were willful and deliberate.

6. At all relevant times, Defendant was and is legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and Class. Further, Defendant is responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

7. Plaintiff further brings this action as a representative of the State of California and the Labor and Workforce Development Agency ("LWDA") to recover civil penalties pursuant to the Private Attorneys General Act ("PAGA"), Labor Code sections 2698, et seq., for violations of numerous Labor Code provisions, including, but not limited to, sections 201-

203, 204, 226, 226.7, 227.3, 245-248.6, 510, 512, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802 and 2810.5, as well as violations of the applicable Wage Order.

JURISDICTION AND VENUE

8. Venue is proper in this judicial district and in the County of Stanislaus, California because Defendant maintained its location and/or transacted business in this county, the obligations and liability arise in this county, and work was performed by members of the proposed class made the subject of this action in this county.

9. The wages, statutory penalties, monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. This Court has jurisdiction over this action pursuant to the California Constitution, article VI, Section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

10. The California Superior Court has jurisdiction in the matter because the individual claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional threshold for Federal Court and the five million dollars (\$5,000,000.00) aggregate jurisdictional threshold for Federal Court and, upon information and belief, Plaintiff and Defendant are residents of, domiciled in, or otherwise subject to jurisdiction in the State of California. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law including the Labor Code, Industrial Welfare Commission ("IWC") Wage Orders, the Code of Civil Procedure, the Rules of Court, and the Business and Professions Code.

THE PARTIES

A. Plaintiff

11. Plaintiff, at all relevant times herein, was Defendant's employee and was entitled to compensation for all hours worked, including regular time and overtime compensation, and penalties from Defendant. Plaintiff was employed by Defendant as a non-exempt, hourly paid employee during the Class Period. Specifically, Plaintiff worked as a packer and quality control inspector from May 2018 to January 17, 2025 in Stanislaus County. Each of the Class Members

are identifiable, current and/or former similarly situated persons who were employed in non-exempt hourly positions in California by Defendant during the Class Period.

B. Defendant

12. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a California corporation, registered and doing business in California. Plaintiff also alleges that Defendant is conducting business in good standing in California.

13. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of the Defendant sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that these Defendants are legally responsible for the payment of overtime compensation, rest and meal period compensation, and wages to Plaintiff and Class by virtue of their unlawful practices, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of each DOE Defendants when ascertained.

14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendant. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and Class.

15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the Defendant, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with permission and consent of the Defendant. Plaintiff also alleges the acts of each Defendant are legally attributable to the other Defendant.

16. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendant sued herein was, at all times relevant hereto, the employer, owner, shareholder, principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing

1 agent, joint employer and/or alter-ego of the remaining Defendant, and was acting, at least in part,
2 within the course and scope of such employment and agency, with the express and implied
3 permission, consent, and knowledge, approval and/or ratification of the other Defendant.

4 **ADMINISTRATIVE PREREQUISITE**

5 17. On February 11, 2025, prior to filing this complaint, Plaintiff gave written notice
6 by electronically filing the notice with the Labor Workforce Development Agency (“LWDA”)
7 (LWDA Case No. LWDA-CM-1079231-25) and by certified mail to Defendant of the specified
8 provisions alleged to have been violated, including the facts and theories to support the alleged
9 violations as required by Labor Code Section 2699.3.

10 18. A true and correct copy of Plaintiff’s letter sent to the LWDA and Defendant dated
11 February 11, 2025, is attached hereto as “**Exhibit A**”. As of the filing of this complaint, LWDA
12 has not responded to the written notice.

13 19. Under Labor Code Section 2699.3 subsection (a), a plaintiff may bring a cause
14 of action under PAGA only after giving notice to the Labor Workforce Development Agency
15 (“LWDA”) and the employer of the Labor Code Sections alleged to have been violated, and
16 after receiving notice from the LWDA of its intention not to investigate, or after 65 days have
17 passed without notice.

18 20. More than sixty-five (65) days have passed without notice from the LWDA.
19 Accordingly, all administrative prerequisites for filing this action have been fulfilled.

20 **GENERAL ALLEGATIONS**

21 21. Plaintiff was employed by Defendant as a packer and quality control inspector
22 from May 2018 to January 17, 2025.

23 22. Labor Code Section 1194 provides that notwithstanding any agreement to work
24 for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to
25 recover in a civil action the unpaid balance of his or her overtime compensation, including interest
26 thereon, reasonable attorneys’ fees, and costs of suit.

27 23. Labor Code Section 1197 provides the California requirement that employees
28 must be paid at least the minimum wage fixed by the IWC, and any payment of less than the

1 minimum wage is unlawful. Furthermore, "in any action under Labor Code Sections 98, 1193
2 .6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum
3 wage fixed by an order of the commission or by statute, an employee shall be entitled to recover
4 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon ... "
5 See California Labor Code Section 1194.2.

6 24. Labor Code Sections 1194 and 1198 also provide that employees in California
7 shall not be employed more than eight hours in any workday unless they receive additional
8 compensation beyond their regular wages in amounts specified by law. Additionally, Labor
9 Code Section 1198 states that the employment of an employee for longer hours than those fixed
10 by the Industrial Welfare Commission is unlawful.

11 25. Labor Code Section 204 requires employers to pay employees all earned wages
12 two times per month on days designated in advance by the employer as regular paydays.
13 Pursuant to Labor Code Section 204 (a) labor performed between the 1st and 15th days,
14 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the
15 month during which the labor was performed, and labor performed between the 16th and the last
16 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the
17 following month. Pursuant to Labor Code Section 204 (d) the requirements of this Section shall
18 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
19 the wages are paid not more than seven calendar days following the close of the payroll period.
20 Plaintiff and Class were also entitled to be paid twice a month at their regular rates, including all
21 meal period premium wages owed, rest period premium wages owed, and wages owed for hours
22 worked. Defendant systematically failed and refused to pay the employees all wages due, and
23 failed to pay those wages twice a month, in that employees were not paid all wages for all meal
24 periods not provided by Defendant, all wages for all rest periods not authorized and permitted by
25 Defendant, and all wages for all hours worked.

26 26. Further, Business and Professions Code Section 17203 provides that any person
27 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
28 Business and Professions Code Section 17204 provides that any person who has suffered actual

injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

27. An employee's regular rate of pay is properly determined by "dividing his total remuneration for employment (except statutory exclusions) in any work week by the total number of hours actually worked by him in that workweek for which such compensation was paid." *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 905.) Thus, employees "who receive incentive bonuses in addition to their guaranteed base pay clearly receive a greater regular rate than the minimum base rate." *Id.* quoting *Walling v. Hamischfeger Corp.* 325 U.S. 427.431 (1945).

28. The California Supreme Court has issued a decision confirming the way employers must compensate employees for missed meal and rest breaks under state law. *Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal.App.5th 1239 (2019). In *Ferra v. Loews Hollywood Hotel, LLC*, the Court unanimously ruled that employers must pay their California employees premiums for meal, rest, and recovery break violations at the employees' regular rate of pay as opposed to the base hourly rate.

29. During all, or a portion of the Class Period, Plaintiff and each member of the Class was employed by Defendant in the State of California.

30. Plaintiff and Class Members were non-exempt employees covered under one or more IWC Wage Order(s), and Labor Code Section 510, and/or other applicable Wage Orders, regulations and statutes, and each Class Member was not subject to an exemption for executive, administrative or professional employees, which imposed obligations on the part of Defendant to pay Plaintiff and Class Members lawful overtime compensation.

31. Plaintiff and Class were covered by one or more IWC Wage Order(s), and Labor Code Section 226.7 and other applicable Wage Orders, regulations and statutes which imposed an obligation on the part of Defendant to pay Plaintiff and Class rest and meal period compensation.

32. During the Class Period, Defendant was obligated to pay Plaintiff and Class Members overtime compensation for all hours worked in excess of eight (8) hours of work in one

(1) day or forty (40) hours in one (1) week and double-time compensation for hours worked in excess of twelve (12) in one (1) day. However, often times Plaintiff and Class Members were required to work overtime in excess of eight (8) hours per workday and in excess of forty (40) hours per workweek but were not paid at the proper overtime rate of pay.

33. During the Class Period, Defendant was obligated to pay Plaintiff and Class Members for all hours worked. However, Defendant maintained a policy and practice of failing to pay Plaintiff and Class Members for all hours worked, including minimum, straight time and overtime wages. During the Class Period, Defendant maintained a policy and practice of requiring Plaintiff and Class Members to work off-the-clock without compensation. Defendant required Plaintiff and Class Members to don and doff off- the-clock. In particular, Defendant required Plaintiff and Class Members to arrive at least thirty minutes earlier than their scheduled shift start time to have enough time prior to the start of the scheduled shift to take on the protective gear and uniform (overalls, hairnets, boots, etc.), then to stay in line with other employees to clock in to work by using the only timeclock machine in the job facility. Plaintiff and Class Members were required to arrive early to avoid being disciplined and to avoid Defendant's unlawful wage deduction. If Plaintiff and Class Members clocked in at least one minute later than the scheduled start of their shifts, Defendant would unlawfully decrease the hourly pay rate of that employee by \$1 for the entire next one week.

34. During the Class Period, Defendant also instructed Plaintiff and Class Members to clock out and continue working after the twelfth hour of work in order not to accumulate double time pay and the second meal period. As a result, Plaintiff and Class Members often worked more than twelve hours per shift but were not compensated for the time worked more than twelve hours and did not receive the second meal period.

35. During the Class Period, Defendant also required Plaintiff and Class Members to clock out at the end of their shifts and to take off the protective gear and uniform off the clock, without compensation.

1 36. During the Class Period, due to Defendant's requirement to keep the machines
2 running throughout the entire shift and due to the lack of coverage, Plaintiff and Class
3 Members were also required to clock out for meal periods and continue working off-the-clock
4 throughout their meal periods or take their first meal periods later, after the fifth hour of work.
5 Plaintiff and Class Members were required to record their meal periods regardless they actually
6 took uninterrupted meal periods or not pr took it late so that on paper it looked like they took
7 their timely meal periods.

8 37. During the Class Period, Plaintiff and Class Members were also required to respond
9 to Defendant's managers' work-related calls, text messages after the scheduled shift hours
10 without compensation.

11 38. During the Class Period, Plaintiff and Class Members received additional
12 remuneration in the form of bonuses. However, Defendant has not compensated Plaintiff and
13 Class Members at the proper overtime, sick pay and meal premium rate. Defendant did not
14 include the additional remuneration paid to Plaintiff and Class Members in the regular rate of
15 pay for purposes of calculating overtime rate of pay, sick pay and meal premiums.

16 39. Defendant's automatic deduction and time rounding policies and practices for meal
17 periods, off-the clock/unpaid work completed during meal periods and/or time spent restricted
18 to Defendant's premises and/or subject to Defendant's control during off-the-clock meal
19 periods (described above), and/or other off-the-clock work resulted in the failure to account for
20 all hours worked and thus the denial of minimum wages as well as overtime wages owed to
21 Plaintiff and Class Members who worked more than eight (8) hours in a day or more than forty
22 (40) hours in a week.

23 40. In maintaining a practice of not paying all wages owed, Defendant failed to
24 maintain accurate records of the hours Plaintiff and Class Members worked. In doing so,
25 Defendant also failed to maintain accurate records of the hours Plaintiff and Class Members
26 worked.
27
28

1 41. During the Class Period, Defendant was obligated to provide Plaintiff and Class
2 with a work-free meal period within the first five (5) hours of a shift no later than the start of
3 sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-
4 free meal period no later than the start of the eleventh hour of work in the workday. Here,
5 Defendant wrongfully failed to provide Plaintiff and Class Members with legally compliant
6 meal periods. Defendant required Plaintiff and Class Members to regularly work in excess of
7 five consecutive hours a day without providing a 30-minute, continuous and uninterrupted,
8 duty-free meal period for every five hours of work, or without compensating Plaintiff and Class
9 Members for meal periods that were not provided by the end of the fifth hour of work or tenth
10 hour of work. Defendant did not adequately inform Plaintiff and Class Members of their right
11 to take their first meal period by the end of the fifth hour of work, or, for shifts greater than 10
12 hours, their second meal period by the end of the tenth hour of work. Moreover, Defendant did
13 not have adequate written policies or practices providing meal periods for Plaintiff and Class
14 Members, nor did Defendant has adequate policies or practices regarding the timing of meal
15 periods.
16

17 42. During the Class Period, due to Defendant's requirement to keep the machines
18 running throughout the entire shift and due to the lack of coverage, Plaintiff and Class Members
19 were required to clock out for meal periods and continue working off-the-clock throughout their
20 meal periods or take their first meal periods later, after the fifth hour of work. Plaintiff and Class
21 Members were required to record their meal periods regardless they actually took uninterrupted
22 meal periods or not or they took it late so that on paper it looked like they took their meal periods.

23 43. During the Class Period, Defendant also failed to provide second meal periods
24 when Plaintiff and Class Members worked more than 10 hours during one shift. Defendant
25 instructed Plaintiff and Class Members to clock out and continue working after the twelfth hour
26 of work in order not to accumulate double time pay and the second meal period. In fact, not only
27 Defendant failed to authorize and provide the second meal period but explicitly instructed
28 Plaintiff and Class Members not to take the second meal periods. As a result, Plaintiff and Class

Members often worked more than twelve hours per shift but did not receive the second meal periods. Plaintiff and Class Members were also instructed to take their meal periods only in a designated meal break area. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and Class Members in compliance with California law.

44. Based on information and belief, despite Defendant's failure to provide lawful meal periods, Defendant implemented a policy and/or practice of rounding the start and end times of Plaintiff's and Class Members' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to Defendant's premises), despite having actual and/or constructive knowledge that Plaintiff and Class Members did not receive lawful meal periods.

45. Moreover, based on information and belief, Defendant failed to keep accurate records of the true start and end times of Plaintiff's and Class Members' meal periods. Based on information and belief, to the extent meal period were recorded, Defendant illegally rounded the start and end times of purported meal periods resulting in Plaintiff and Class Members not being paid for all time worked as well as late and/or shortened meal periods. See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

46. Additionally, Defendant was obligated to provide Plaintiff and Class Members with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each day. Defendant, however, wrongfully failed to authorize and permit Plaintiff and Class Members to take timely and duty-free rest periods. Defendant regularly required Plaintiff and Class Members to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and Class Members for rest periods that were not authorized or permitted. Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and Class Members, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant did not inform Plaintiff and Class Members of their right to take a rest period. Defendant did not schedule rest periods every 4 hours or a major fraction. Due to the heavy workload, the

1 requirement to keep the machines running throughout the entire shift and lack of coverage,
2 Plaintiff and Class Members would regularly miss their first, second, third or fourth rest breaks.
3 Accordingly, Defendant's policy and practice was for Plaintiff and Class Members to work
4 through rest periods and to not authorize or permit them to take any rest periods.

5 47. California Labor Code Section 2802 requires employers to reimburse employees
6 for their necessary expenditures and losses incurred in direct consequence of the discharge of
7 their duties or of their obedience to directions of the employer.

8 48. During the Class Period, Defendant wrongfully required Plaintiff and Class
9 Members to pay expenses that they incurred in direct discharge of their duties for Defendant
10 without reimbursement. Plaintiff and Class Members used their personal cell phones to regularly
11 send photos of defective products to their managers, send and receive calls and text messages
12 related to work assignments, tasks and schedule changes. Defendant failed to reimburse Plaintiff
13 and Class Members for a reasonable portion of their phone bills. Plaintiff and Class Members
14 were also required to purchase face masks and gloves during COVID pandemic without
15 reimbursement.

16 49. Plaintiff and Class Members incurred these expenses as a direct result of
17 performing their job duties for Defendant, and Defendant have failed to indemnify Plaintiff and
18 Class Members for these employment-related expenses.

19 50. Defendant continues to employ non-exempt, hourly-paid employees within
20 California.

21 51. Plaintiff and Class Members primarily performed non-exempt work, often in
22 excess of the maximum regular rate hours set forth in the applicable IWC Wage Order(s),
23 regulations or statutes, and therefore entitled the Plaintiff and Class Members to overtime
24 compensation at the rate of one and a half times their regular rate of pay and, when applicable,
25 double time compensation as set forth by the applicable IWC Wage Order(s), regulations and/or
26 statutes.

27 52. During the Class Period, Defendant required Plaintiff and Class Members to work
28 regular hours, off the clock hours, and overtime hours without lawful compensation in violation

1 of the applicable IWC Wage Order(s), regulations and statutes, and Defendant: (1) willfully failed
2 and refused, and continue to fail and refuse to pay compensation for all hours worked, including
3 lawful regular time and overtime compensation, to Class Members; and (2) willfully failed and
4 refused, and continue to fail and refuse to pay due and owing wages promptly upon termination
5 of employment to Plaintiff and affected Class Members.

6 53. Class Members who ended their employment with Defendant during the Class
7 Period but were not paid the above due compensation for all hours worked timely upon the
8 termination of their employment as required by Labor Code Sections 201, 202, and 203 are
9 entitled to penalties as provided by Labor Code Section 203. These unpaid wages include wages
10 for unpaid work time (including minimum, straight time and overtime wages), missed meal
11 periods, and missed rest periods. Accordingly, Plaintiff and Class Members are entitled to recover
12 from Defendant their additionally accruing wages for each day they were not paid, at their regular
13 hourly rate of pay, up to 30 days maximum pursuant to Labor Code Section 203.

14 54. During the Class Period, Defendant failed to furnish Plaintiff and Class Members
15 with accurate, itemized wage statements showing correct Defendant's legal entity name, all
16 applicable hourly rates, and all gross and net wages earned including employees' total hours
17 worked, correct hours worked, correct wages earned for hours worked, correct overtime hours
18 worked, correct wages for meal periods that were not provided in accordance with California
19 law, correct wages for rest periods that were not authorized and permitted to take in
20 accordance with California law. As a result of these violations of California Labor Code
21 Section 226(a), Plaintiff and Class Members are owed the amounts provided for in California
22 Labor Code Section 226(e), including actual damages.

23 55. During the Class Period, Defendant failed to provide proper paid sick leave to
24 Plaintiff and Class Members. Defendant improperly calculated the sick leave accrual and the sick
25 leave rate of pay owed to Plaintiff and Class Members by failing to base the accrued sick leave
26 hours on the correct number of hours worked (as a result of the rounding/automatic deduction
27 policies and practices for meal periods and/or shift start and end times/other required off-the-
28

1 clock work including but not limited to work completed during unpaid meal periods and by failing
2 to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not
3 limited to, non-discretionary bonuses and/or other non-discretionary compensation into the sick
4 leave pay rate calculation).

5 56. Based on information and belief, Defendant further failed to provide notice of the
6 accurate sick leave amount balance available to Plaintiff and Class Members on their wage
7 statements or other written statements. Based on information and belief, Defendant failed to put
8 Class Members on notice of their paid sick leave rights-or thereby putting their entitlement to sick
9 leave in a Labor Code Section 2810.5 notice. In addition, Defendant failed to maintain accurate
10 records of used sick leave and the balance of paid sick leave left to the Aggrieved Employee
11 throughout the relevant time period.

12 57. Based on information and belief, Defendant failed to provide notice of sick leave
13 amount balance left for Plaintiff and Class Members, thus affecting their intelligent exercise of
14 their paid sick leave. But for this failure, Plaintiff and Class Members would have used their paid
15 sick leave at least prior to their respective separations, for as on several occasions thereafter, he
16 or she would have been entitled to use the banked sick leave and earn appropriate compensation.

17 58. In violation of Labor Code Section 247.5, Defendant failed to maintain records
18 documenting the correct hours worked and paid sick days accrued and used by Plaintiff and Class
19 Members, permitting the presumption that Plaintiff and Class Members were entitled to the
20 maximum number of hours accruable under this article.

21 59. Defendant unlawfully retained and continue to retain paid sick leave that should
22 have been paid but was not, as a result of Defendant's failure to properly institute a paid sick
23 leave program. Accordingly, Plaintiff and Class Members are entitled to injunctive relief,
24 attorney's fees, declaratory relief, restitution, and penalties as permitted by law. Plaintiff requests
25 all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code
26 Sections 233 and 234, which incorporates the paid sick leave requirements.

27 60. California Labor Code Section 227.3 provides that when an employer policy
28 provides for paid vacations and/or paid time off, and an employee is terminated without having

1 taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee
2 as wages at the employee's final rate in accordance with such contract of employment or employer
3 policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation
4 time or paid time off upon termination. Based on information and belief, Defendant had and
5 continue to have a uniform policy and practice of failing to allow Class Members to use their
6 earned vacation/paid time off during their employment and failing to pay all vested, accrued paid
7 time off (including but not limited to, all owed vacation pay/paid time off paid at the final rate
8 including non-discretionary compensation) to Class Members upon separation of employment, in
9 violation of California law, including but not limited to, Labor Code Section 227.3.

10 61. Labor Code Sections 1198 and 1199 make unlawful any employment of any
11 employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
12 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
13 Sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, Defendant's
14 violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping
15 provisions, minimum wages and overtime wages, business expenses and other violations
16 described herein result in separate violations of Sections 1198 and 1199, which subject
17 Defendant to civil penalties under Labor Code Section 1197.1.

18 **CLASS ALLEGATIONS**

19 62. Plaintiff brings this action on behalf of herself and all other similarly situated
20 persons as a class action pursuant to Code of Civil Procedure Section 382. The Class is composed
21 of and defined as follows:

- 22 (a) All persons who are employed or have been employed by Defendant in the
23 State of California, and who, within the four (4) years of the filing of this
24 Complaint to the present, have worked as non-exempt employees and were not
25 paid all wages owed, including but not limited to the legally requisite
26 minimum, regular time rate, overtime rate and/or double-time rate, sick pay
27 and accrued vacation pay;
28

- 1 (b) All persons who are employed or have been employed by Defendant in the
2 State of California, and who, within the four (4) years of the filing of this
3 Complaint to the present, have worked as non-exempt employees and have not
4 been provided a meal period for shifts in excess of five (5) hours within the
5 first five (5) hours such shifts, and were not provided one (1) hour's pay for
6 each day during which a lawful meal period was not provided;
- 7 (c) All persons who are employed or have been employed by Defendant in the
8 State of California, and who, within the four (4) years of the filing of this
9 Complaint to the present, have worked as non-exempt employees and have not
10 been provided a rest period for every four (4) hours, or major fraction thereof,
11 worked per day, and were not provided compensation of one (1) hour's pay for
12 each day on which such rest period(s) was not provided;
- 13 (d) All persons who are employed or have been employed by Defendant in the
14 State of California, and who, within the four (4) years of the filing of this
15 Complaint to the present, have worked as non-exempt employees and have not
16 been reimbursed expenditures in discharge of their duties;
- 17 (e) All persons who are employed or have been employed by Defendant in the
18 State of California, and who, within the three (3) years of the filing of this
19 Complaint to the present, have worked as non-exempt employees and have
20 been terminated or resigned, and have not been paid wages pursuant to Labor
21 Code Section 203 and are owed restitution and waiting time penalties for
22 unpaid wages;
- 23 (f) All persons who are employed or have been employed by Defendant in the
24 State of California, and who, within the one (1) year of the filing of this
25 Complaint to the present have worked as non-exempt employees and were not
26 provided an accurate payroll record or wage statement as required under Labor
27 Code Sections 226 and 1174;
- 28

(g) All persons who are employed or have been employed by Defendant in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and were subjected to unlawful and unfair business practices within the meaning of California's Unfair Competition Law and who suffered injury, including lost money, as a result of Defendant's unlawful and unfair business practices.

63. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or necessary to amend the definition of the Class. Plaintiff will formally define and designate a class definition at such time when Plaintiff seeks to certify the Class alleged in this Complaint.

64. 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.

65. The Court should permit this action to be maintained as a class action pursuant to Code of Civil Procedure Section 382 because:

- (a) The questions of law and fact common to Class predominate over any question affecting only individual class members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the Class members;
- (c) Class is so numerous that it is impractical to bring all members of the Class before the Court;
- (d) Plaintiff and Class Members will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties and in obtaining adequate compensation for the damages and injuries which Defendant's actions have inflicted upon Class;

- 1 (f) There is a community of interest in ensuring that the combined assets and
2 available insurance of the Defendant are sufficient to adequately
3 compensate Class Members for the injuries sustained;
- 4 (g) Without class certification, the prosecution of separate actions by
5 individual members of the Class would create a risk of:
- 6 (1) Inconsistent or varying adjudications with respect to individual
7 members of the Class which would establish an incompatible
8 standard of conduct for Defendant; and/or
- 9 (2) Adjudications with respect to the individual members which
10 would, as a practical matter, be dispositive of the interests of other
11 members not parties to the adjudications, or would substantially
12 impair or impede their ability to protect their interests, including
13 but not limited to the potential for exhausting the funds available
14 from those parties who are, or may be, responsible Defendant; and
- 15 (h) Defendant has acted or refused to act on grounds generally applicable to
16 Class, thereby making final injunctive relief appropriate with respect to
17 Class as a whole.

18 66. There is a well-defined community of interest in the litigation and Class is
19 readily ascertainable:

- 20 (a) Numerosity: The members of Class (and each subclass, if any) are so
21 numerous that joinder of all members would be unfeasible and impractical.
22 The membership of the entire Class is unknown to Plaintiff at this time,
23 however, the Class is estimated to be greater than 200 individuals and the
24 identity of such membership is readily ascertainable by inspection of
25 Defendant' records.
- 26 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
27 interests of each Class Member with whom there is a shared, well-defined
28

community of interest, and Plaintiff's claims (or defenses, if any) are typical of all Class Members' claims as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no conflicts with or interests antagonistic to any Class Member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: A Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1. The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
2. The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
3. The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
4. The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the California Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights

1 out of fear of direct or indirect retaliation. Former employees are also
2 fearful of bringing actions because they believe their former employers
3 might damage their future endeavors through negative references and/or
4 other means. Class actions provide the class members who are not named in
5 the complaint with a type of anonymity that allows for the vindication of
6 their rights at the same time as their privacy is protected.

7 67. Plaintiff contemplates the eventual issuance of notice to the proposed members of
8 the Class that would set forth the subject and nature of the instant action. Defendant's own
9 business records may be utilized for assistance in the preparation and issuance of the
10 contemplated notices. To the extent that any further notices may be required, Plaintiff would
11 contemplate the use of additional techniques and forms commonly used in class actions, such as
12 published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by
13 other methods suitable to Class and deemed necessary and/or appropriate by the Court.

14 **FIRST CAUSE OF ACTION**

15 **Failure to Pay All Wages, Sick Pay and Vacation for All Hours Worked**
16 **(Against Defendant, DOES 1 through 50, and each of them)**

17 68. Plaintiff and Class Members re-allege and incorporate by reference all preceding
18 paragraphs of this complaint as though fully set forth herein.

19 69. Labor Code Section 510, subdivision (a) states in pertinent part: "Any work in
20 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek...
21 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for
22 any employee."

23 70. Labor Code Section 1194, subdivision (a) states: "Notwithstanding any agreement
24 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
25 overtime compensation applicable to the employee is entitled to recover in a civil action the
26 unpaid balance of the full amount of this minimum wage or overtime compensation, including
27 interest thereon, reasonable attorney's fees, and costs of suit."
28

1 71. Further, pursuant to Labor Code Section 1197, payment of less than the minimum
2 wage fixed by the Labor Commission is unlawful.

3 72. Pursuant to Labor Code Section 1198, it is unlawful to employ persons for longer
4 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
5 IWC Wage Order(s).

6 73. Pursuant to the IWC Wage Order(s), Defendant is required to pay Plaintiff and
7 Class Members for all hours worked, meaning the time during which an employee is subject to
8 the control of an employer, including all the time the employee is suffered or permitted to work,
9 whether or not required to do so.

10 74. Labor Code Section 204 requires employers to pay employees all earned wages
11 two times per month on days designated in advance by the employer as regular paydays.
12 Pursuant to Labor Code Section 204 (a) labor performed between the 1st and 15th days,
13 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the
14 month during which the labor was performed, and labor performed between the 16th and the last
15 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the
16 following month. Pursuant to Labor Code Section 204 (d) the requirements of this Section shall
17 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
18 the wages are paid not more than seven calendar days following the close of the payroll period.
19 Plaintiff and Class were also entitled to be paid twice a month at their regular rates, including all
20 meal period premium wages owed, rest period premium wages owed, and wages owed for hours
21 worked. However, during Class period, Defendant systematically failed and refused to pay the
22 employees all wages due, and failed to pay those wages twice a month, in that employees were
23 not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods
24 not authorized and permitted by Defendant, and all wages for all hours worked.

25 75. Plaintiff and Class Members were required to work overtime in excess of eight (8)
26 hours per workday and in excess of forty (40) hours per workweek but were not paid at the
27 proper overtime rate of pay.

1 76. Defendant's pattern, practice and uniform administration of corporate policy
2 regarding illegal employee compensation as described herein is unlawful and creates an
3 entitlement, pursuant to Labor Code Section 218, to recovery by Plaintiff and the members of the
4 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the
5 appropriate rate.

6 77. Pursuant to Labor Code Section 1194.2(a) (which provides that in any action under
7 Labor Code § 1194, an employee shall be entitled to recover liquidated damages), the members
8 of Class seek recovery of liquidated damages on the straight-time portion of uncompensated hours
9 of work (not including the overtime portion thereof) in an amount equal to the wages unlawfully
10 unpaid and interest thereon.

11 78. California Labor Code Section 227.3 provides that when an employer policy
12 provides for paid vacations and/or paid time off, and an employee is terminated without having
13 taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee
14 as wages at the employee's final rate in accordance with such contract of employment or
15 employer policy respecting eligibility or time served and that there shall be no forfeiture of
16 vested vacation time or paid time off upon termination. Based on information and belief,
17 Defendant had and continue to have a uniform policy and practice of failing to allow Class
18 Members to use their earned vacation/paid time off during their employment and failing to pay
19 all vested, accrued paid time off (including but not limited to, all owed vacation pay/paid time
20 off paid at the final rate including non-discretionary compensation) to Class Members upon
21 separation of employment, in violation of California law, including but not limited to, Labor
22 Code Section 227.3.

23 79. During the Class Period, Defendant failed to provide proper paid sick leave to
24 Plaintiff and Class Members. Defendant improperly calculated the sick leave accrual and the sick
25 leave rate of pay owed to Plaintiff and Class Members by failing to base the accrued sick leave
26 hours on the correct number of hours worked (as a result of the rounding/automatic deduction
27 policies and practices for meal periods and/or shift start and end times/other required off-the-
28 clock work including but not limited to work completed during unpaid meal periods and by

1 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including
2 but not limited to, non-discretionary bonuses and/or other non-discretionary compensation into
3 the sick leave pay rate calculation).

4 80. Based on information and belief, Defendant further failed to provide notice of the
5 accurate sick leave amount balance available to Plaintiff and Class Members on their wage
6 statements or other written statements. Based on information and belief, Defendant failed to put
7 Class Members on notice of their paid sick leave rights-or thereby putting their entitlement to
8 sick leave in a Labor Code Section 2810.5 notice. In addition, Defendant failed to maintain
9 accurate records of used sick leave and the balance of paid sick leave left to the Aggrieved
10 Employee throughout the relevant time period.

11 81. Based on information and belief, Defendant failed to provide notice of sick leave
12 amount balance left for Plaintiff and Class Members, thus affecting their intelligent exercise of
13 their paid sick leave. But for this failure, Plaintiff and Class Members would have used their paid
14 sick leave at least prior to their respective separations, for as on several occasions thereafter, he
15 or she would have been entitled to use the banked sick leave and earn appropriate compensation.

16 82. In violation of Labor Code Section 247.5, Defendant failed to maintain records
17 documenting the correct hours worked and paid sick days accrued and used by Plaintiff and
18 Class Members, permitting the presumption that Plaintiff and Class Members were entitled to the
19 maximum number of hours accruable under this article.

20 83. Defendant unlawfully retained and continue to retain paid sick leave that should
21 have been paid but was not, as a result of Defendant's failure to properly institute a paid sick
22 leave program. Accordingly, Plaintiff and Class Members are entitled to injunctive relief,
23 attorney's fees, declaratory relief, restitution, and penalties as permitted by law. Plaintiff requests
24 all relief pursuant to the aforementioned code provisions, including but not limited to Labor
25 Code Sections 233 and 234, which incorporates the paid sick leave requirements.

26 84. That calculation of individual damages for Class Members may at some point be
27 required does not foreclose the possibility of taking common evidence on questions regarding
28 their entitlement to overtime compensation. *Collins v. Rocha* (1972) 7 Cal.3d 232; *Hypolite v.*

1 *Carleson* (1975) 52 Cal.App.3d 566; *Employment Development Dept. v. Superior Court* (1981)
2 30 Cal.3d 256).

3 85. As a result, Defendant is liable to Plaintiff and Class Members for the civil
4 penalties provided for in Labor Code Sections 210, 558, 1197.1 for failing to pay for all hours
5 worked, including overtime. This conduct also results in violations of Labor Code sections
6 218.5, 510, 558.1, 1198-1199, and all applicable IWC Wage Orders, section 12(A). These
7 violations subject Defendant to civil penalties under Labor Code Sections 558, 558.1, 218.5 and
8 all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and
9 Wage Order provision results in a separate civil penalty, for each Class Member, for each pay
10 period during which the referenced statutes and Wage Order provisions were violated.

11 86. Pursuant to Labor Code Sections 218.6 and 1194(a) and Civil Code Section 3287,
12 Class Members seek recovery of pre-judgment interest on all amounts recovered herein.

13 87. Pursuant to Labor Code Sections 218.5 and/or 1194, Class Members request that
14 the Court award reasonable attorneys' fees and costs incurred by them in this action.

15 **SECOND CAUSE OF ACTION**

16 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

17 **(Against Defendant, DOES 1 through 50, and each of them)**

18 88. Plaintiff and Class Members re-allege and incorporate by reference all preceding
19 paragraphs of this complaint as though fully set forth herein.

20 89. Labor Code Sections 226.7 and 512 provide that no employer shall employ any
21 person for a work period of more than five (5) hours without providing a meal period of not less
22 than thirty (30) minutes within the fifth (5th) hour of work, or employ any person for a work
23 period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30)
24 minutes.

25 90. Labor Code Section 226.7 provides that if an employer fails to provide an
26 employee a meal period in accordance with this Section, the employer shall pay the employee one
27 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
28 period is not provided in accordance with this Section.

1 91. Defendant failed to schedule for Plaintiff and Class Members complaint meal
2 periods. In so doing, Defendant has intentionally and improperly denied meal periods to Plaintiff
3 and Class Members in violation of Labor Code Sections 226.7 and 512, and other regulations and
4 statutes.

5 92. At all times relevant hereto, Plaintiff and Class have worked more than five (5)
6 hours in a workday.

7 93. By virtue of Defendant's failure to schedule Plaintiff and Class Members in such
8 a way as to provide a timely and/or work free meal period to Plaintiff and Class Members, Plaintiff
9 and Class Members have suffered, and will continue to suffer, damages in an amount which is
10 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
11 ascertained according to proof at trial.

12 94. Plaintiff, individually and on behalf of Class Members, requests recovery of meal
13 period compensation pursuant to Labor Code Section 226.7 for the four (4) years prior to filing
14 this complaint, as well as the assessment of any statutory penalties against Defendant in a sum as
15 provided by the Labor Code and/or other statutes.

16 95. Plaintiff and Class Members are thus entitled to be paid one hour of additional
17 wages for each workday he or she was not provided with all required meal period(s).
18 Defendant, however, regularly failed to pay Plaintiff and Class Members the additional wages
19 to which they were entitled for meal periods and that were not provided. As a result, Defendant
20 is liable to Plaintiff and Class Members for the civil penalties provided for in Labor Code §§
21 210, 558 for failing to provide meal periods and pay meal period premium wages. The
22 aforementioned conduct also results in violations of Labor Code sections 226.7, 512, and 1198-
23 1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable
24 IWC Wage Orders. These violations subject Defendant to civil penalties under Labor Code
25 sections 558.1, 558 and all applicable IWC Wage Orders, section 20. Each violation of each
26 Labor Code section and Wage Order provision results in a separate civil penalty, for each Class
27 Member for each pay period during which the referenced statutes and Wage Order provisions
28 were violated. Defendant's failure to provide valid meal periods, and the automatic deduction

1 for meal periods that were not provided/valid, ultimately results in further violations, such as
2 violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations
3 discussed below.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

6 **(Against Defendant, DOES 1 through 50, and each of them)**

7 96. Plaintiff and Class Members re-allege and incorporate by reference all preceding
8 paragraphs of this complaint as though fully set forth herein.

9 97. The IWC Wage Orders and Labor Code Section 226.7 provides that employers
10 must authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest
11 time per four (4) work hours or major fraction thereof.

12 98. Labor Code Section 226.7, subdivision (b) provides that if an employer fails to
13 provide an employee rest period in accordance with this Section, the employer shall pay the
14 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
15 that the rest period is not provided.

16 99. Defendant failed and/or refused to implement a policy by which Plaintiff and Class
17 Members could receive rest periods and/or work free rest periods. By and through its actions,
18 Defendant intentionally and improperly denied rest periods to Plaintiff and Class Members in
19 violation of Labor Code Sections 226.7 and 512.

20 100. At all times relevant hereto, Plaintiff and Class have worked more than four (4)
21 hours in a workday.

22 101. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
23 and Class Members, Plaintiff and Class Members have suffered, and will continue to suffer,
24 damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of
25 this Court and which will be ascertained according to proof at trial.

26 102. Plaintiff, individually and on behalf of employees similarly situated, requests
27 recovery of rest period compensation pursuant to Labor Code Section 226.7 for the four (4) years
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1 prior to filing this Complaint, as well as the assessment of any statutory penalties against
2 Defendant, and each of them, in a sum as provided by the Labor Code and/or any other statute.

3 103. Plaintiff and Class Members are thus entitled to be paid one hour of additional
4 wages for each workday he or she was not authorized and permitted to take all required rest
5 period(s). Defendant, however, regularly failed to pay Plaintiff and Class Members the
6 additional wages to which they were entitled for rest periods and that they were not authorized
7 and permitted to take. As a result, Defendant is liable to Plaintiff and Class Members for the
8 civil penalties provided for in Labor Code Sections 210, 558 for failing to authorize and permit
9 rest periods and pay rest period premium wages. The aforementioned conduct also results in
10 violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders,
11 Section 12(A). These violations subject Defendant to civil penalties under Labor Code sections
12 558, 2699, and all applicable IWC Wage Orders, Section 20. Each violation of each Labor Code
13 section and Wage Order provision results in a separate civil penalty, for each Class Member for
14 each pay period during which the referenced statutes and Wage Order provisions were violated

15 **FOURTH CAUSE OF ACTION**

16 **Failure to Provide Accurate Itemized Wage Statements**

17 **(Against Defendant, DOES 1 through 50, and each of them)**

18 104. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs
19 of this complaint as though fully set forth herein.

20 105. Labor Code Section 1174, subdivision (d) requires an employer to keep at a central
21 location in California, or at the plant or establishment at which the employee is employed, payroll
22 records showing the hours worked daily by, and the wages paid to, each employee.

23 106. Labor Code Section 226, subdivision (a) requires an employer to provide
24 employees—either as a detachable part of the check, draft, or voucher paying the employee's
25 wages, or separately when wages are paid by personal check or cash—an accurate itemized wage
26 statement in writing showing

27 (1) gross wages earned, (2) total hours worked by the employee . . . , (4) all
28 deductions . . . , (5) net wages, (6) the inclusive dates of the period for which

1 the employee is paid, (7) the name of the employee and only the last four
2 digits of his or her social security number or an employee identification
3 number other than a social security number, (8) the name and address of the
4 legal entity that is the employer . . . , and (9) all applicable hourly rates in
5 effect during the pay period and corresponding number of hours worked at
6 each hourly rate by the employee

7 107. Moreover, the IWC Wage Orders require that every employer shall keep accurate
8 information with respect to each employee, including time records showing when each employee
9 begins and ends each work period, when each employee takes a meal period, the total daily hours
10 worked by each employee and the total hours worked in each payroll period, and applicable rates
11 of pay.

12 108. Plaintiff is informed and believes that Defendant willfully and intentionally failed
13 to make and/or keep records which accurately reflect the total hours worked by Plaintiff and
14 Class. Specifically, Plaintiff believes that Defendant's records do not accurately reflect when
15 Plaintiff and Class worked during their meal and rest periods and/or took untimely meal periods
16 or worked for hours not paid.

17 109. Labor Code Section 226, subdivision (e) provides that if an employer knowingly
18 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
19 the total hours worked by the employee, causing the employee injury, then the employee is
20 entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the initial
21 violation and one hundred dollars (\$100.00) for each subsequent violation, up to four thousand
22 dollars (\$4,000.00). Plaintiff is informed and believes that Defendant willfully failed to make or
23 keep accurate records for Plaintiff and Class.

24 110. Defendant knew or should have known that Plaintiff and Class members were
25 entitled to receive accurate wage statements, which would include meal break premiums, and/or
26 rest break premiums, as required by Labor Code Section 226. As a result of Defendant violating
27 Labor Code Section 226, Plaintiff and Class Members suffered injury and damage to their
28 statutorily protected rights. Accordingly, Plaintiff and Class Members are entitled to recover

1 from Defendant the greater of their actual damages caused by Defendant's failure to comply with
2 Labor Code Section 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.
3 Moreover, Defendant is liable to Plaintiff and Class Members for the civil penalties provided for
4 in Labor Code section 226.3 for failing to furnish accurate itemized wage statements.

5 111. Plaintiff seeks penalties under Labor Code Section 1174(d). Pursuant to Labor
6 Code Section 1174.5, any person, including any entity, employing labor who willfully fails to
7 maintain accurate and complete records required by Labor Code Section 1174 is subject to a
8 penalty under Section 1174.5. Pursuant to the applicable IWC Order section 7(A)(3), every
9 employer shall keep time records showing when the employee begins and ends each work period.
10 Meal periods and total hours worked daily shall also be recorded. Defendant, however, failed to
11 maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and
12 Class Members.

13 112. Defendant's failure to provide and maintain records required by the Labor Code
14 IWC Wage Orders deprived Plaintiff and Class Members the ability to know, understand and
15 question the accuracy and frequency of meal periods, and the accuracy of their hours worked
16 stated in Defendant's records. Therefore, Plaintiff and Class Members had no way to dispute the
17 resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to
18 Defendant. As a direct result, Plaintiff and Class Members have suffered and continue to suffer,
19 substantial losses related to the use and enjoyment of such wages, lost interest on such wages and
20 expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under
21 state law, all to their respective damage in amounts according to proof at trial. As a result of
22 Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders,
23 Plaintiff and Class Members have also suffered an injury in that they were prevented from
24 knowing, understanding, and disputing the wage payments paid to them. As a result, Defendant
25 is liable to Plaintiff and Class Members for the civil penalties provided for in Labor Code Section
26 1174.5 for failing to maintain accurate records of hours worked and meal periods. Defendant's
27 failure to keep accurate and complete payroll records for Plaintiff and non-exempt aggrieved
28 employees violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders,

1 section 7. These violations subject Defendant to civil penalties under Labor Code Sections 558.1,
2 226.6, 1174.5. Each violation of each Labor Code section and Wage Order provision, for each
3 Class Member aggrieved employee, results in a separate civil penalty.

4 113. Plaintiff is informed and believes that Defendant's failure to keep and maintain
5 accurate records and information, as described above, was willful, and Plaintiff and Class are
6 entitled to statutory penalties pursuant to Labor Code Section 1174.5.

7 **FIFTH CAUSE OF ACTION**

8 **Failure to Pay Wages upon Termination of Employment**
9 **(Against Defendant, DOES 1 through 50, and each of them)**

10 114. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs
11 of this complaint as though fully set forth herein.

12 115. Plaintiff and certain Class Members who ended their employment with Defendant
13 during the Class Period, were entitled to be promptly paid for all hours worked, including lawful
14 regular time compensation, overtime compensation, double-time compensation, and other
15 premiums, as required by Labor Code Sections 201 through 203. They are also entitled to meal
16 period and rest period premium pay in accordance with Labor Code Sections 226 and 226.7.

17 116. Plaintiff and Class Members were not compensated for their unlawful and/or
18 missed meal periods and/or rest periods, and were not paid proper regular time compensation,
19 overtime compensation or double-time compensation in accordance with law as a result of
20 Defendant's Labor Code violations.

21 117. To date, Class Members who ended their employment with Defendant during the
22 Class Period have not been compensated for all hours worked.

23 118. Plaintiff and Class Members seek the payment of penalties pursuant to Labor Code
24 Section 203, according to proof.

25 119. Plaintiff is also entitled to attorneys' fees and costs, pursuant to Labor Code
26 Section 1194, and prejudgment interest.

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(Against Defendant, DOES 1 through 50, and each of them)

121. California Labor Code §2802, states "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

123. Defendant knowingly, willingly and intentionally attempted to offset the cost of doing business on the Plaintiff and Class.

125. Accordingly, Plaintiff and Class are entitled to an award of “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees and interest.

Unfair Business Practices

126. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

127. Business and Professions Code Section 17200 et seq. (also referred to herein as the “Unfair Business Practices Act” or “Unfair Competition Law”) prohibits unfair competition in the form of any unlawful, unfair or fraudulent business act or practice.

1 128. Business and Professions Code Section 17204 allows “a person who has suffered
2 injury in fact and has lost money or property as a result of the unfair competition” to prosecute a
3 civil action for violation of the Unfair Competition Law (“UCL”).

4 129. Labor Code Section 90.5, subdivision (a) states that it is the public policy of
5 California to vigorously enforce minimum labor standards in order to ensure employees are not
6 required to work under substandard and unlawful conditions, and to protect employers who
7 comply with the law from those who attempt to gain competitive advantage at the expense of their
8 workers by failing to comply with minimum labor standards.

9 130. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4)
10 years prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as
11 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent
12 business practices and acts described in this Complaint including but not limited to violations of
13 Labor Code Sections 201-203, 204, 226, 226.7, 245-248.6, 227.3, 510, 512, 558, 558.1, 1174,
14 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5 as well as other statutes.

15 131. The violations of these laws and regulations, as well as of the fundamental
16 California public policies protecting workers, serve as unlawful predicate acts and practices for
17 purposes of Business and Professions Code Section 17200 et seq.

18 132. The acts and practices described above constitute unfair, unlawful and fraudulent
19 business practices, and unfair competition, within the meaning of Business and Professions Code
20 Section 17200 et seq. Among other things, the acts and practices have forced Plaintiff and other
21 similarly situated employees to labor for many consecutive hours without receiving the meal and
22 rest periods and overtime compensation to which they are entitled by law, while enabling
23 Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

24 133. As a result of Defendant’s acts, Plaintiff and Class Members have suffered injury
25 in fact in being denied their statutorily entitled meal and rest periods and full compensation for
26 hours worked.

27 134. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
28 and Class have suffered lost wages in an amount to be proven at trial.

1 135. Business and Professions Code Section 17203 provides that a court may make
2 such orders or judgments as may be necessary to prevent the use or employment by any person
3 of any practice which constitutes unfair competition. Injunctive relief is necessary and
4 appropriate to prevent Defendant from repeating its unlawful, unfair and fraudulent business acts
5 and business practices alleged above.

6 136. Business and Professions Code Section 17203 provides that the Court may restore
7 to any person in interest any money or property that may have been acquired by means of such
8 unfair competition. Plaintiff and Class are entitled to restitution pursuant to Business and
9 Professions Code Section 17203 for all wages and payments unlawfully withheld from
10 employees, including the fair value of the meal and rest periods taken away from them during the
11 four-year period prior to the filing of this Complaint, as well as for all expenses or losses incurred
12 by Plaintiff and Class in direct consequence of the discharge of his or her duties, or of his or her
13 obedience to the directions of the employer.

14 137. Business and Professions Code Section 17202 provides, “Notwithstanding Section
15 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
16 forfeiture, or penal law in a case of unfair competition.” Plaintiff and Class are entitled to enforce
17 all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code
18 Section 17202.

19 138. Plaintiff’s success in this action will enforce important rights affecting public
20 interest, and in that regard, Plaintiff sues on behalf of the general public, as well as herself and
21 other similarly situated employees. Plaintiff and Class seek and are entitled to restitution, civil
22 penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

23 139. Plaintiff herein takes upon herself enforcement of these laws and lawful claims.
24 There is a financial burden involved in pursuing this action. The action is seeking to vindicate a
25 public right, and it would be against the interests of justice to penalize Plaintiff by forcing her to
26 pay attorneys’ fees from the recovery in this action. Attorneys’ fees are appropriate pursuant to
27 Code of Civil Procedure Section 1021.5 and otherwise.

28 ///

EIGHTH CAUSE OF ACTION

Violation of California Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.*
(Against Defendants, DOES 1 through 50, and each of them)

140. Plaintiff re-alleges and incorporates by reference all preceding paragraphs in this complaint, as if fully alleged herein.

141. Plaintiff seeks recovery of penalties under the Labor Code Private Attorney General Act of 2004 (“PAGA.”) (Labor Code sections 2698 *et seq.*)

142. PAGA permits an “aggrieved employee” to recover penalties on behalf of himself/herself and other employees subject to violations of the Labor Code, including violations of sections 201-203, 204, 226, 226.7, 227.3, 245-248.6, 510, 512, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802 and 2810.5, as well as the applicable Wage Order.

143. Plaintiff is informed and believes Defendants at all relevant times employed one or more employees.

144. For those code sections that provide for the recovery of civil penalties, Plaintiff will seek on behalf of all aggrieved employees those penalties. For those sections of the Labor Code that do not specifically provide for civil penalties, Plaintiff will seek civil penalties of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code section 2699, subdivision (f).

145. Section 2699, subdivision (a) provides that civil penalties may be “recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.” (Code Civ. Proc., § 2699, subd. (a).) Section 2699, subdivision (g), provides that an employee who prevails in a civil action under section 2699 shall be entitled to an award of reasonable attorneys’ fees and costs.

146. The State of California, Plaintiff and aggrieved employees are, therefore, entitled to civil penalties, attorneys’ fees and costs, according to proof.

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1 **PRAYER FOR RELIEF**

2 Plaintiff, individually, and on behalf of all others similarly situated only with respect to
3 the class claims, prays for relief and judgment against Defendant as follows:

4 **Class Certification**

5 1. That this action be certified as a class action with respect to the First, Second,
6 Third, Fourth, Fifth, Sixth and Seventh Causes of Action;

7 2. That Plaintiff be appointed as the representative of the Class; and

8 3. That counsel for Plaintiff be appointed as Class Counsel.

9 **As to the First Cause of Action**

10 4. That the Court declare, adjudge and decree that Defendant violated California
11 Labor Code Sections 204, 245-248.6, 227.3, 510, 512, 1194, 1197, 1197.1, 1198, 1198.5,
12 1199 and applicable IWC Wage Orders by willfully failing to pay all wages, sick pay and
13 accrued vacation due;

14 5. For general unpaid wages as may be appropriate;

15 6. For pre-judgment interest on any unpaid compensation commencing from the
16 date such amounts were due;

17 7. For liquidated damages;

18 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
19 California Labor Code § 1194(a); and,

20 9. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Second Cause of Action**

23 10. That the Court declare, adjudge and decree that Defendant violated California
24 Labor Code Sections 226.7 and 512, and the IWC Wage Orders;

25 11. For unpaid meal period premium wages as may be appropriate;

1 12. For pre-judgment interest on any unpaid compensation commencing from the
2 date such amounts were due;

3 13. For reasonable attorneys' fees under California Code of Civil Procedure §
4 1021.5, and for costs of suit incurred herein; and

5 14. For such other and further relief as the Court may deem equitable and
6 appropriate.

7 As to the Third Cause of Action

8 15. That the Court declare, adjudge and decree that Defendant violated California
9 Labor Code Sections 226.7 and 512, and the IWC Wage Orders;

10 16. For unpaid rest period premium wages as may be appropriate;

11 17. For pre-judgment interest on any unpaid compensation commencing from the
12 date such amounts were due;

13 18. For reasonable attorneys' fees under California Code of Civil Procedure §
14 1021.5, and for costs of suit incurred herein; and

15 19. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 As to the Fourth Cause of Action

18 20. That the Court declare, adjudge and decree that Defendant violated the record
19 keeping provisions of California Labor Code Section 226(a) and applicable IWC Wage
20 Orders, and willfully failed to provide accurate itemized wage statements thereto;

21 21. For penalties and actual damages pursuant to California Labor Code § 226(e);

22 22. For injunctive relief to ensure compliance with this Section, pursuant to
23 California Labor Code Section 226(h);

24 23. For reasonable attorneys' fees and for costs of suit incurred herein; and

25 24. For such other and further relief as the Court may deem equitable and
26 appropriate.
27
28

1 As to the Fifth Cause of Action

2 25. That the Court declare, adjudge and decree that Defendant violated California
3 Labor Code Sections 201, 202, 203 by willfully failing to pay all compensation owed at the
4 time of termination of the employment;

5 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
6 employees who have left Defendant's employ;

7 27. For pre-judgment interest on any unpaid wages from the date such amounts were
8 due;

9 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

10 29. For such other and further relief as the Court may deem equitable and
11 appropriate.
12

13 As to the Sixth Cause of Action

14 30. That the Court declare, adjudge and decree that Defendant violated Labor Code
15 Section 2802 and the IWC Wage Orders;

16 31. For general unpaid wages and reimbursement of business expenses as may be
17 appropriate;

18 32. For pre-judgment interest on any unpaid compensation commencing from the
19 date such amounts were due;

20 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

21 34. For such other and further relief as the Court may deem equitable and
22 appropriate.
23

24 As to the Seventh Cause of Action

25 35. That the Court declare, adjudge and decree that Defendant violated California
26 Business & Professions Code Section 17200, *et seq.* by failing to pay wages for all hours
27 worked, failing to provide meal periods, failing to maintain accurate records of meal
28 periods, failing to authorize and permit rest periods, and failing to maintain accurate records

1 of all hours worked and meal periods, failing to furnish accurate wage statements, and
2 failing to indemnify necessary business expenses;

3 36. For restitution of unpaid wages to Plaintiff and all Class Members and
4 prejudgment interest from the day such amounts were due and payable;

5 37. For the appointment of a receiver to receive, manage and distribute any and all
6 funds disgorged from Defendant and determined to have been wrongfully acquired by
7 Defendant as a result of violations of California Business & Professions Code §§ 17200 *et*
8 *seq.*;

9 38. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 California Code of Civil Procedure Section 1021.5;

11 39. For injunctive relief to ensure compliance with this Section, pursuant to
12 California Business & Professions Code Sections 17200, *et seq.*; and,

13 40. For such other and further relief as the Court may deem equitable and
14 appropriate.
15

16 As to the Eighth Cause of Action

17 41. That the Court declare, adjudge and decree that Defendants violated the
18 California Labor Code by failing to pay wages for all hours worked, paid sick leave and
19 accrued vacation, failing to provide meal periods, failing to maintain accurate records of meal
20 periods, failing to authorize and permit rest periods, failing to maintain accurate records of all
21 hours worked and meal periods, failing to indemnify necessary business expenses, failing to
22 pay final wages at termination, and failing to furnish accurate wage statements;

23 42. For all civil penalties pursuant to California Labor Code § 2699, *et seq.*, and all
24 other applicable Labor Code provisions;

25 43. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
26 California Labor Code § 2699;
27
28

1 44. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 As to all Causes of Action

4 44. For any additional relief that the Court deems just and proper.

5
6 Dated: April 22, 2025

TUNYAN LAW, APC

7
8 A handwritten signature in blue ink, appearing to read 'L. Tunyan', is written over a horizontal line.

9
10 Lilit Tunyan
Artur Tunyan

11 Attorneys for Plaintiff JOSEFINA LEON TAPIA
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1
2 **DEMAND FOR JURY TRIAL**
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4

5 Plaintiff JOSEFINA LEON TAPIA hereby demands a jury trial on all issues so triable.
6
7

8 Dated: April 22, 2025

TUNYAN LAW, PAC

9
10 

11 _____
12 Lilit Tunyan
13 Artur Tunyan

14 Attorneys for Plaintiff JOSEFINA LEON TAPIA
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28 **PROOF OF SERVICE**

Exhibit “A”



535 N Brand Blvd. Suite 285
Glendale, CA 91203
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

February 11, 2025

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested
Gemperle Egg Packing Co. Inc.
dba Gemperle Family Farms
Bob Triebsch
Agent for Service of Process
300 Palm Street
Turlock, CA 95380

VIA CERTIFIED MAIL

Return Receipt Requested
Gemperle Egg Packing Co. Inc.
dba Gemperle Family Farms
10218 Lander Avenue
Turlock, CA 95380

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Soriano v. Tripalink, Corp.*

To Whom It May Concern:

Please be advised that my office has been retained by Josefina Leon Tapia (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against her former employer Gemperle Egg Packing Co. Inc. (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which Plaintiff alleges Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Stanislaus County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a packer and quality control inspector from May 2018 to January 17, 2025, primarily in Stanislaus County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and from 10 to 14 hours per day.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. Defendant, at all relevant times, was an employer or person acting on behalf of employer(s) who violated Plaintiff's and other non-exempt aggrieved employees and exempt aggrieved employees' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "a natural person who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California Law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

Plaintiff intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. Plaintiff will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. Plaintiff asks and demands that Defendant put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, Plaintiff also offers to Defendant to place those individuals on notice if Defendant voluntarily provides their contact information.

Failure to Pay for All Hours Worked

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §1194, subdivision (a) provides that notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit. Further, pursuant to Labor Code §1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

Labor Code § 1197 provides the California requirement that employees must be paid at least the minimum wage fixed by the IWC, and any payment of less than the minimum wage is unlawful. Furthermore, "in any action under Labor Code §§ 98, 1193 .6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon ... " See California Labor Code § 1194.2.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

An employee’s regular rate of pay is properly determined by “dividing his total remuneration for employment (except statutory exclusions) in any work week by the total number of hours actually worked by him in that workweek for which such compensation was paid.” *Huntington*

Memorial Hosp. v. Superior Court (2005) 131 Cal.App.4th 893, 905.) Thus, employees “who receive incentive bonuses in addition to their guaranteed base pay clearly receive a greater regular rate than the minimum base rate.” *Id.* quoting *Walling v. Hamischfeger Corp.* 325 U.S. 427.431 (1945).

The California Supreme Court has issued a decision confirming the way employers must compensate employees for missed meal and rest breaks under state law. *Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal.App.5th 1239 (2019). In *Ferra v. Loews Hollywood Hotel, LLC*, the Court unanimously ruled that employers must pay their California employees premiums for meal, rest, and recovery break violations at the employees’ regular rate of pay as opposed to the base hourly rate.

Throughout the statutory period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked, including minimum, straight time and overtime wages. However, Defendant maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to work off-the-clock without compensation. Defendant required Plaintiff and the Aggrieved Employees to don and doff off- the-clock. In particular, Defendant required Plaintiff and the Aggrieved Employees to arrive at least thirty minutes earlier than their scheduled shift start time to have enough time prior to the start of the scheduled shift to take on the protective gear and uniform (overalls, hairnets, boots, etc.), then to stay in line with other employees to clock in to work by using the only timeclock machine in the job facility. Plaintiff and the Aggrieved Employees were required to arrive early to avoid being disciplined and to avoid Defendant’s unlawful wage deduction. If Plaintiff and the Aggrieved Employees clocked in at least one minute later than the scheduled start of their shifts, Defendant would unlawfully decrease the hourly pay rate of that employee by \$1 for the entire next one week.

Throughout the statutory period, Defendant also instructed Plaintiff and the Aggrieved Employees to clock out and continue working after the twelfth hour of work in order not to accumulate double time pay and the second meal period. As a result, Plaintiff and the Aggrieved Employees often worked more than twelve hours per shift but were not compensated for the time worked more than twelve hours and did not receive the second meal period.

Throughout the statutory period, Defendant also required Plaintiff and the Aggrieved Employees to clock out at the end of their shifts and to take off the protective gear and uniform off the clock, without compensation.

Throughout the statutory period, due to Defendant’s requirement to keep the machines running throughout the entire shift and due to the lack of coverage, Plaintiff and the Aggrieved Employees were also required to clock out for meal periods and continue working off-the-clock throughout their meal periods or take their first meal periods later, after the fifth hour of work. Plaintiff and the Aggrieved Employees were required to record their meal periods regardless they

actually took uninterrupted meal periods or not pr took it late so that on paper it looked like they took their timely meal periods.

Throughout the statutory period, Plaintiff and the Aggrieved Employees were also required to respond to Defendant's managers' work-related calls, text messages after the scheduled shift hours without compensation.

Throughout the statutory period, Plaintiff and the Aggrieved Employees received additional remuneration in the form of bonuses. However, Defendant has not compensated Plaintiff and the Aggrieved Employees at the proper overtime, sick pay and meal premium rate. Defendant did not include the additional remuneration paid to Plaintiff and the Aggrieved Employees in the regular rate of pay for purposes of calculating overtime rate of pay, sick pay and meal premiums.

Defendant's automatic deduction and time rounding policies and practices for meal periods, off-the clock/unpaid work completed during meal periods and/or time spent restricted to Defendant's premises and/or subject to Defendant's control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to Plaintiff and the Aggrieved employees who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime. This conduct also results in violations of Labor Code sections 218.5, 510, 558.1, 1198-1199, and all applicable IWC Wage Orders, section 12(A). These violations subject Defendant to civil penalties under Labor Code §§ 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a separate civil penalty, for each Aggrieved Employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s). Pursuant to the Wage Order 5-2001, subdivision 7(A) "(A) Every 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, split shift intervals and total daily hours worked shall also be recorded.” However, Defendant failed to record employee’s meal periods in violation of the Wage order requirements.

Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take their first meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, their second meal period by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant has adequate policies or practices regarding the timing of meal periods.

Throughout the statutory period, due to Defendant’s requirement to keep the machines running throughout the entire shift and due to the lack of coverage, Plaintiff and the Aggrieved Employees were required to clock out for meal periods and continue working off-the-clock throughout their meal periods or take their first meal periods later, after the fifth hour of work. Plaintiff and the Aggrieved Employees were required to record their meal periods regardless they actually took uninterrupted meal periods or not or they took it late so that on paper it looked like they took their meal periods.

Throughout the statutory period, Defendant also failed to provide second meal periods when Plaintiff and the Aggrieved Employees worked more than 10 hours during one shift. Defendant instructed Plaintiff and the Aggrieved Employees to clock out and continue working after the twelfth hour of work in order not to accumulate double time pay and the second meal period. In fact, not only Defendant failed to authorize and provide the second meal period but explicitly instructed Plaintiff and the Aggrieved Employees not to take the second meal periods. As a result, Plaintiff and the Aggrieved Employees often worked more than twelve hours per shift but did not receive the second meal periods. Plaintiff and the Aggrieved Employees were also instructed to take their meal periods only in a designated meal break area. Accordingly, Defendant’s policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Based on information and belief, despite Defendant’s failure to provide lawful meal periods, Defendant implemented a policy and/or practice of rounding the start and end times of Plaintiff’s and the Aggrieved Employees’ meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to Defendant’s premises), despite having actual and/or constructive knowledge that Plaintiff and the Aggrieved Employees did not receive lawful meal periods.

Moreover, based on information and belief, Defendant failed to keep accurate records of the true start and end times of Plaintiff's and the Aggrieved Employees' meal periods. Based on information and belief, to the extent meal period were recorded, Defendant illegally rounded the start and end times of purported meal periods resulting in Plaintiff and the Aggrieved Employees not being paid for all time worked as well as late and/or shortened meal periods. See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages. The aforementioned conduct also results in violations of Labor Code sections 226.7, 512, and 1198- 1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject Defendant to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a separate civil penalty, for each Aggrieved Employee for each pay period during which the referenced statutes and Wage Order provisions were violated. Defendant's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant did not inform Plaintiff and the Aggrieved Employees of their

right to take a rest period. Defendant did not schedule rest periods every 4 hours or a major fraction. Due to the heavy workload, the requirement to keep the machines running throughout the entire shift and lack of coverage, Plaintiff and the Aggrieved Employees would regularly miss their first, second, third or fourth rest breaks. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages. The aforementioned conduct also results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject Defendant to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, § 20. Each violation of each Labor Code section and Wage Order provision results in a separate civil penalty, for each Aggrieved Employee for each pay period during which the referenced statutes and Wage Order provisions were violated

Failure to Maintain Accurate Records of Hours Worked

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in

amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods. Defendant's failure to keep accurate and complete payroll records for Plaintiff and non-exempt aggrieved employees violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject Defendant to civil penalties under Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each Aggrieved Employee, results in a separate civil penalty.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement. Plaintiff and the Aggrieved Employees used their personal cell phones to regularly send photos of defective products to their managers, send and receive calls and text messages related to work assignments, tasks and schedule changes. Defendant failed to reimburse Plaintiff and the Aggrieved Employees for a reasonable portion of their phone bills.

Plaintiff and the Aggrieved Employees were also required to purchase face masks and gloves during COVID pandemic without reimbursement.

Plaintiff and the Aggrieved Employees incurred these expenses as a direct result of performing their job duties for Defendant, and Defendant have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment

of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant' employ. These unpaid wages include wages for unpaid work time (including minimum, straight time and overtime wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination. Moreover, Defendant is liable to Plaintiff and non-exempt aggrieved employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all 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 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 (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. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay

period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." Lab. Code § 226(e)(1).

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify Defendant's legal entity name, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and the Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result,

Defendant owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Provide Paid Sick Leave and Written Notice of Available Paid Sick Leave (Violations of Labor Code §§ 245-248.5)

Throughout the statutory time period, Defendant failed to provide proper paid sick leave to Plaintiff and the Aggrieved Employees. Defendant improperly calculated the sick leave accrual and the sick leave rate of pay owed to Plaintiff and the Aggrieved Employees by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses and/or other non-discretionary compensation into the sick leave pay rate calculation).

Based on information and belief, Defendant further failed to provide notice of the accurate sick leave amount balance available to Plaintiff and the Aggrieved Employees on their wage statements or other written statements.

Based on information and belief, Defendant failed to put the Aggrieved Employees on notice of their paid sick leave rights-or thereby putting their entitlement to sick leave in a Labor Code § 2810.5 notice. In addition, Defendant failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the Aggrieved Employee throughout the relevant time period.

Based on information and belief, throughout the relevant period, Defendant failed to provide notice of sick leave amount balance left for Plaintiff and the Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for this failure, Plaintiff and the Aggrieved Employees would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and Plaintiff seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of Plaintiff and all non-exempt aggrieved employees.

In violation of Labor Code § 247.5, Defendant failed to maintain records documenting the correct hours worked and paid sick days accrued and used by Plaintiff and the Aggrieved

Employees, permitting the presumption that Plaintiff and the Aggrieved Employees were entitled to the maximum number of hours accruable under this article.

Defendant unlawfully retained and continue to retain paid sick leave that should have been paid but was not, as a result of Defendant's failure to properly institute a paid sick leave program.

Plaintiff requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to Defendant's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. Plaintiff requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code §§ 233 and 234, which incorporates the paid sick leave requirements. Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to provide any information on accrued sick leave.

Failure to Pay All Accrued Vacation Wages at Termination

California Labor Code § 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, Defendant had and continue to have a uniform policy and practice of failing to allow the Aggrieved Employees to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation) to the Aggrieved Employees upon separation of employment, in violation of California law, including but not limited to, Labor Code § 227.3.

Standard Conditions of Labor Violations

Together, Labor Code §§ 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including §§ 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, Defendant's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, business expenses and other violations described herein result in separate violations of §§ 1198 and 1199, which subject Defendant to civil penalties under Labor Code §§ 1197.1 and 2699.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to non-exempt and exempt aggrieved employees including but not limited to Labor Code §§ 201-203, 204, 226, 226.7, 245-248.6, 227.3, 510, 512, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

Defendant has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties Plaintiff and other non-exempt aggrieved employees and exempt aggrieved employees seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 218.5, 225.5, 226, 226.3, 226.6, 233, 234, 558, 558.1, 1174.5, 1197.1, 1198, 1198.5, 1199, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendant or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
TUNYAN LAW, APC

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for submission of your PAGA Case.
Date: Tuesday, February 11, 2025 11:17:44 AM

2/11/2025

LWDA Case No. LWDA-CM-1079231-25
Law Firm : Tunyan Law, APC
Plaintiff Name : Josefina Leon Tapia
Employer: Gemperle Egg Packing Co. Inc. dba Gemperle Family Farms
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

Please note that a PAGA Notice is not a complaint within the meaning of Division 5 (Labor Code §§6300 et seq.). To file a complaint about workplace safety and health hazards with Cal/OSHA, please visit:
<https://www.dir.ca.gov/dosh/complaint.htm>

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

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TUNYAN LAW, APC

535 N. Brand Blvd. STE 285
Glendale, CA 91203



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- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

**BOB TRIEBSCH
GEMPRELE EGG PACKING CO. INC
300 PALM STREET
TURLOCK, CA 95380**



9590 9402 8114 2349 9457 89

2. Article Number (Transfer from service label)

9589 0710 5270 0112 6468 65

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Ang Estan

C. Date of Delivery

2/18/25

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

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(500)

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☐ Signature Confirmation

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Domestic Return Receipt

USPS TRACKING#



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• Sender: Please print your name, address, and ZIP+4® in this box•



TUNYAN LAW, APC
535 N. Brand Blvd. STE 285
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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

GEMPRELE EGG PACKING CO. INC
dba GEMPERLE FAMILY FARMS
10218 LANDER AVENUE
TURLOCK, CA 95380



9590 9402 8114 2349 9457 72

2. Article Number (Transfer from service label)

9589 0710 5270 0112 6468 58

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x B Ramirez

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Berenice Ramirez

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
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| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |
| ☐ Mail Restricted Delivery | |

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

1 STATE OF CALIFORNIA)
2) ss
3 COUNTY OF LOS ANGELES)

4 I am employed in the county of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within action; my business address is 535 N Brand Blvd. Suite 285,
6 Glendale, California 91203.

7 On the date indicated below, I served the document described as: **FIRST AMENDED**
8 **COMPLAINT** on the interested parties in this action by sending a true copy thereof to
9 interested parties as follows and as stated on the attached service list:

10 Stacy Henderson
11 stacy@hendersonhatfield.com
12 Vanessa Luna
13 vanessa@hendersonhatfield.com
14 Cindy Gotelli
15 cindy@hendersonhatfield.com
16 **HENDERSON HATFIELD APC**
17 1101 15th Street, Modesto, California 95354
18 Telephone: (209) 599-5003
19 Facsimile: (209) 599-5008
20 Direct: (209) 924-4894

21 ***Attorneys for Defendant GEMPERLE EGG PACKING CO. INC. DBA GEMPERLE***
22 ***FAMILY FARMS***

23 [✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale,
24 California, by e-mail delivery on the parties listed herein at their most recent known
25 e-mail address or e-mail of record in this action.

26 [✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept
27 electronic service, I caused the documents to be sent to the persons at the electronic
28 service addresses listed above via electronic mail. I did not receive an error message.

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

Executed on April 22, 2025, at Glendale, California.

Lilit Tunyan

Name



Signature