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as an individual and on behalf all others similarly situated

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 Assigned for all purposes to Hon. John R Mayne, Department 21 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE** Complaint Filed: February 11, 2025 Trial: None Set

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement ("Agreement") is made by and between Plaintiff JOSEFINA LEON TAPIA ("Plaintiff") and Defendants GEMPERLE EGG PACKING CO., INC. and GEMPERLE BROS. DBA GEMPERLE FAMILY FARMS ("Defendants"). The Agreement refers to Plaintiff and Defendants collectively as "Parties," or individually as "Party."

1. DEFINITIONS.

1.1. "Action" means the Plaintiff's lawsuit alleging wage and hour violations against Defendants captioned *Leon v. Gemperle Egg Packing Co. Inc.*, Case No. CV-25-001398 initiated on February 11, 2025, pending in Superior Court of the State of California, County of Stanislaus.

1.2. "Administrator" means ILYM Group, Inc. the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. "Aggrieved Employee" means all persons who worked for Defendants, or either of them, in California as an hourly paid, non-exempt employee during the PAGA Period.

1.5. "Class" or "Class Members" means all persons who worked for Defendants, or either of them, in California as an hourly paid, non-exempt employee during the Class Period.

1.6. "Class Counsel" means Tunyan Law, APC.

1.7. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.8. "Class Data" means Class Member identifying information in Defendants' possession including the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.

1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.

1.12. "Class Period" means the period from February 11, 2021 through June 1, 2025 .

1.13. "Class Representative" means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. "Court" means the Superior Court of California, County of Stanislaus.

1.16. "Defendants" means named Defendants GEMPERLE EGG PACKING CO., INC. and GEMPERLE BROS. DBA GEMPERLE FAMILY FARMS.

1.17. "Defense Counsel" means HENDERSON HATFIELD, A Professional Corporation.

1.18. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.22. "Gross Settlement Amount" means **Four Hundred Twenty-Five Thousand Dollars and Zero Cents ($425,000.00)** which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, the employee and employer share of payroll taxes and required withholdings for the Wage Portion of the Individual Class Payments to the Participating Class Members, and the Administrator's Expenses.

1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 35% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).

1.27. "LWDA PAGA Payment" means the 65% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(i).

1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the employee and employer share of payroll taxes and required withholdings for the Wage Portion of the Individual Class Payments to the Participating Class Members and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendants, or either of them, for at least one day during the PAGA Period.

1.31. "PAGA Period" means the period from February 11, 2024 through June 1, 2025.

1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq*.).

1.33. "PAGA Notice" means Plaintiff's February 11, 2025 and August 5, 2025 letters to Defendants and the LWDA providing notice pursuant to Labor Code § 2699.3(a).

1.34. "PAGA Penalties" means the total amount of PAGA civil penalties in the amount of $40,000.00 to be paid from the Gross Settlement Amount, allocated 35% to the Aggrieved Employees ($14,000.00) and the 65% to LWDA ($26,000.00) in settlement of PAGA claims.

1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.36. "Plaintiff" means JOSEFINA LEON TAPIA, the named plaintiff in the Action.

1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.39. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.

1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.

1.41. "Released Parties" means: Defendants and each of their past, present and/or future subsidiaries, dbas, parents, divisions, related entities, joint venturers, and any other entities that could be considered to have jointly employed the Class Members and/or Aggrieved Employees, as well as each of their respective owners, co-employers, joint employers, agents, officers, directors, stockholders, shareholders, investors, members, principals, subsidiaries, affiliates, partners, predecessors, successors, assigns, insurers, reinsurers, employees, attorneys, heirs, estates, executors, spouses, associates, representatives, administrators, fiduciaries, trustees, accountants, auditors, company-sponsored employee benefit plans of any nature, and all other legal entities affiliated with the foregoing, individually and in their representative capacities.

1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. "Response Deadline" means sixty (60) days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.45. "Workweek" means any week during which a Class Member worked for Defendants, or either of them, for at least one day, during the Class Period.

2. <u>RECITALS.</u>

2.1. On February 11, 2025, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant Gemperle Egg Packing Co., Inc. for: (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 and During Employment; (6) Failure to Reimburse for Necessary Expenditures; and (7) Unfair Business Practices. On April 22, 2025, Plaintiff filed a First Amended Complaint adding a cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.]. On August 5, 2025, Plaintiff filed a Doe

Amendment adding Gemperle Bros. dba Gemperle Family Farms as a Defendant. The First Amended Complaint with Doe Amendment is the operative complaint in the Action (the "Operative Complaint.") Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.

2.3. On July 1, 2025, the Parties participated in an all-day mediation presided over by Brandon McKelvey, Esq. and reached an agreement to settle the Action.

2.4. Prior to the mediation, Plaintiff obtained, through informal discovery, documents and information necessary to evaluate the claims in the Action, including sample pay and time records for the Class. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending class action asserting claims that will be extinguished or affected by the Settlement.

3. <u>MONETARY TERMS.</u>

3.1. <u>Gross Settlement Amount</u>. Except as otherwise provided by Paragraph 9 below, Defendants promise to pay $425,000.00 and no more as the Gross Settlement Amount, inclusive of all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2. <u>Payments from the Gross Settlement Amount</u>. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. <u>To Plaintiff</u>: Class Representative Service Payment to the Class Representative of not more than $10,000 in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. Provided that Plaintiff and Class Counsel are in compliance with the terms of this Agreement, Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. Plaintiff will seek Court approval for any Class Representative Service Payment in the Final Approval Motion. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 and 1/3%, which is currently estimated to be $141,666.67 and a Class Counsel Litigation Expenses Payment of not more than $17,000.00. Defendants will not oppose requests for these payments. Plaintiff will seek court approval for Class Counsel Fees Payment and Class Litigation Expenses Payment in the Final Approval Motion. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed $10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $10,000.00, the Administrator will retain the remainder in the Net Settlement Amount. ILYM Group, Inc. has been selected as the Administrator, based upon its "not to exceed" bid of $7,950.00.

3.2.4. <u>To Each Participating Class Member</u>: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. <u>Tax Allocation of Individual Class Payments</u>. 10 % of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 90% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion").[vi] The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. <u>Effect of Non-Participating Class Members on Calculation of Individual Class Payments</u>. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. <u>To the LWDA and Aggrieved Employees:</u> PAGA Penalties in the amount of $40,000.00 be paid from the Gross Settlement Amount, with 65% ($26,000.00) allocated to the LWDA PAGA Payment and 35% ($14,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties ($14,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay

Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

3.2.6. To the Required State and Federal Agencies: Unless the Court orders otherwise, the Administrator shall pay any and all employee and employer share of payroll taxes and required withholdings for the Wage Portion of the Individual Class Payments to the Participating Class Members to the required State and Federal agencies on behalf of Defendants and the Participating Class Members.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. As of June 1, 2025, the estimated number of Workweeks worked by 390 Class Members during the Class Period is estimated to be 53,855, and 275 Aggrieved Employees during the PAGA Period who worked an estimate of 8,088 PAGA Pay Periods.

4.2. Class Data. Not later than fourteen (14) days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than sixty (60) days after the Effective

Date.

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment and the employee and employer share of payroll taxes and required withholdings for the Wage Portion of the Individual Class Payments to the Participating Class Members. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the employee and employer share of payroll taxes and required withholdings for the Wage Portion of the Individual Class Payments to the Participating Class Members and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date when the check will be voided, which date shall be one hundred eighty (180) days after the date of mailing. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are retuned undelivered without USPS forwarding address.

Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the Cy Pres recipient selected by mutual agreement of the Parties not later than 15 days prior to filing motion for preliminary approval of this Settlement by Plaintiff and approved by the Court in accordance with the requirements of California Code of Civil Procedure § 384, thereby leaving no "unpaid residue." The Parties, Class Counsel and Defense Counsel will represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres recipient.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS.

Effective on the date when Defendants fully fund the entire Gross Settlement Amount, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1. Plaintiff's Release.

5.1.1. Scope of Plaintiff's Release. Plaintiff and her former, present and future spouses, children, heirs, representatives, agents, attorneys, administrators, executors, successors, and assigns, generally release and discharge the Released Parties from all causes of action, claims, transactions, occurrences, obligations, liabilities and damages of every kind and nature, including punitive damages, to the fullest extent permitted by law which arise out of or relate to Plaintiff's employment with Defendants to the fullest extent permitted by law as further described in the Individual Settlement Agreement and General Release separately executed by the Parties ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.2. <u>Plaintiff's Waiver of Rights Under California Civil Code § 1542</u>. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2. <u>Release by Participating Class Members:</u> All Participating Class Members, on behalf of themselves and their respective former, present and future spouses, children, representatives, agents, attorneys, heirs, administrators, executors, successors, and assigns, release and discharge the Released Parties from all claims, demands, rights, liabilities, causes of action, injuries, grievances, obligations, losses, damages, penalties, interest, fines, debts, liens, liabilities, attorneys' fees, consultant's fees, expert's fees, accountant's fees, costs and any other form of relief or remedy in law or equity, of every nature and description whatsoever, known or unknown, foreseen or unforeseen, anticipated or unanticipated, suspected or unsuspected, arising from or otherwise related to the claims asserted or that could have been asserted against the Released Parties based on the factual allegations asserted in the Operative Complaint and any future amendments to the Operative Complaint, whether arising under State or other applicable law, that occurred during the Class Period ("Released Class Claims"). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3. Release by Aggrieved Employees: All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release and discharge, on behalf of themselves and their respective former, present and future spouses, children, representatives, agents, attorneys, heirs, administrators, executors, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and/or the PAGA Notice attached hereto as **Exhibit B**.

6. MOTION FOR PRELIMINARY APPROVAL.

Plaintiff shall prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

6.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval at least 10 days before filing the date Plaintiff plans to file the motion, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code § 2699(f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members or the Administrator; (vi) a signed declaration from Class Counsel attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code § 2699.3(a)), Operative Complaint (Labor Code § 2699(*l*)(1)), this Agreement (Labor Code § 2699(*l*)(2)) and all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending class case or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6.3. Duty to Cooperate. Class Counsel and Defense Counsel shall work together in good faith to agree upon the content of the Motion for Preliminary Approval and related pleadings. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. Defendants shall not oppose Plaintiff's Motion for Preliminary Approval to the extent it is consistent with the terms and conditions of this Agreement, and the content has been approved by Defendants prior to filing the Motion for Preliminary Approval. Additionally, Defendants may provide a written response to any characterization of the law or facts contained in the Motion for Preliminary Approval. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2. Employer Identification Number. The Administrator shall have and use Defendants' Employer Identification Number for purposes of calculating payroll tax withholdings and providing the payments and reports state and federal tax authorities.

7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation § 468B-1.

7.4. Notice to Class Members.

7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

7.4.2. Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice (with Spanish translation) substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.4.3. Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class

Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the sixty (60) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5. If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith. in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than sixty (60) days after the Administrator mails the Class Notice or as otherwise extended for re-mailed Class Notices as described herein. A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline, subject to extension for remailed Class Notices as described herein.

7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual PAGA Payment.

7.6. Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) days after the Administrator mails the Class Notice, or as otherwise extended for re-mailed

Class Notices as described herein, to challenge the number of Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7. Objections to Settlement.

7.7.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or engage an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline, or as otherwise extended for re-mailed Class Notices as described herein.

7.7.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1. Website, Email Address and Toll-Free Number. The Administrator will post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, the Class Notice, the Final Approval and the Judgment on the Administrator's website. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.5. Administrator's Declaration. Not later than fourteen (14) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.6. Final Report by Settlement Administrator. Within fourteen (14) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fourteen (14) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

Payment of Employee and Employer Shares of Payroll Taxes and Withholdings and Related Reports. The Administrator shall use Defendants' Employer Identification Number for purposes of calculating payroll tax withholdings and providing the required payments and reports to the State and Federal tax authorities.

8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.

Based on its records, Defendants estimate that, as of June 1, 2025, the number of Workweeks worked by 390 Class Members during the Class Period is estimated to be 53,855. The parties stipulate to a 10%

escalation of the estimated workweeks without any increase to the GSA. If the number of actual workweeks during the Class Period exceeds 10% of the estimated workweeks (i.e., exceeds 59,241 workweeks), Defendants can either have the Gross Settlement Amount increased by 1% for each percent over the 10% threshold that the actual number of Workweeks exceed the estimated number of Workweeks (if the number of Workweeks increases by 11%, the Gross Settlement Amount will increase 1%), or have the Class Period end on the date that the estimated number of Workweeks exceed 10% threshold or 59,241 Workweeks. Fifteen (15) calendar days prior to filing preliminary approval motion Defendants shall confirm to Plaintiffs' counsel the actual accurate number of Workweeks as of June 1, 2025 indicating whether Defendants intend to end the Class Period prior to the Class Period end date of June 1, 2025.

9. <u>DEFENDANTS' RIGHT TO WITHDRAW</u>

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendants may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. <u>MOTION FOR FINAL APPROVAL.</u>

Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code § 2699(*l*), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than ten (10) days prior to date Plaintiff plans to file the Motion for Final Approval. Class Counsel and Defense Counsel shall work together in good faith to agree upon the content of the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval. Defendants shall not oppose Plaintiff's Motion for Final Approval to the extent it is consistent with the terms and conditions of this Agreement and the content has been approved by Defendants prior to filing the Motion for Final Approval. Additionally, Defendants may provide a written response to any characterization of the law or facts contained in the Motion for Final Approval.

10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later that five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval.

10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net

Settlement Amount.

10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT.

If any amended judgment is required under Code of Civil Procedure § 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Defendants adamantly deny the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint, denies any and all liability for the causes of action alleged and has raised various defenses to the claims. Defendants asserts that it fully complied with all applicable wage and hour laws and contends that civil penalties under PAGA are not warranted. Defendants also deny that the Action is suitable for class certification. Defendants have entered into the Settlement solely for purposes of resolving this dispute to avoid costly, disruptive, and time-consuming litigation and does not admit to any wrongdoing or liability whatsoever. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserves the right to contest certification of any class for any reasons, and Defendants reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

12.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendants.

12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Lilit Tunyan
ltunyan@tunyanlaw.com
Artur Tunyan

atunyan@tunyanlaw.com
TUNYAN LAW, APC
535 N Brand Blvd. Suite 285
Glendale, California 91203
Telephone: (323) 410-5050

To Defendants:

Stacy Henderson
stacy@hendersonhatfield.com
HENDERSON HATFIELD, A Professional Corporation
1101 15th Street
Modesto, California 95354
Telephone: (209) 599-5003
Facsimile: (209) 599-5008

12.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

12.20 No Media or Press. Plaintiff, Defendants and their respective Counsel, recognize, accept and agree that the Parties to this Agreement desire that the terms of this Agreement, the fact that the Agreement has been entered into, the terms of the Settlement embodied in this Agreement, the disposition of the Action, the Action, and all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence obtained during the course of the Action and discovery, shall not be discussed with or presented to the media or press in any form or manner. Accordingly, Plaintiff, Defendants and their respective Counsel agree that they shall not initiate any press release, or publication via any form of media, and, if contacted by press or the media, their response shall be limited to a recitation of the facts, including Defendants' denial of liability for the allegations in the Operative Complaint and PAGA Letter.

Plaintiff & Class Representative:

Firmado por:

Dated: 11/6/2025 | 2:29 PM PST

By: Josefina Leon

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JOSEFINA LEON TAPIA

Plaintiff's Counsel:

Dated: 11/6/2025 | 5:52 PM PST

TUNYAN LAW, APC

DocuSigned by:

By: Lilit Tunyan

C1FEE94AA91E49A...

Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff JOSEFINA LEON TAPIA, as an individual and on behalf all others similarly situated

Defendants:

Dated: 11/7/2025

GEMPERLE EGG PACKING CO., INC.

By: Stephen M Gemperle

Print Name

Signature

Owner / President

Title

Dated: 11/7/2025

GEMPERLE BROS. DBA GEMPERLE FAMILY FARMS

By: Stephen M. Gemperle

Print Name

Signature

President

Title

Defendants' Counsel:

Dated: 11/12/2025

HENDERSON HATFIELD, A Professional Corporation

By: [signature]
Stacy Henderson

Attorneys for Defendants GEMPERLE BROS. DBA GEMPERLE FAMILY FARMS and GEMPERLE EGG PACKING CO., INC.

Exhibit "A"

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Leon v. Gemperle Egg Packing Co. Inc.
Stanislaus County Superior Court Case No. CV-25-001398 r

The Superior Court for the State of California authorized this Notice. Read it carefully! It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit ("Action") against Defendants GEMPERLE EGG PACKING CO. INC. and GEMPERLE BROS. DBA GEMPERLE FAMILY FARMS ("Defendants") for alleged wage and hour violations. The Action was filed by former Defendants' employee plaintiff JOSEFINA LEON TAPIA ("Plaintiff") and seeks payment of back wages, penalties, expense reimbursements for a class of hourly employees ("Class Members") who worked for Defendants, or either of them, during the Class Period (February 11, 2021 through June 1, 2025) and (2) penalties under the California Private Attorney General Act ("PAGA") for all hourly employees who worked for Defendants, or either of them, during the PAGA Period (February 11, 2024 through June 1, 2025) ("Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on Defendants' records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be $______ (less withholding) and your Individual PAGA Payment is estimated to be $______**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants' records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on Defendants' records showing that **you worked ______ workweeks** during the Class Period and **you worked ______ pay periods** during the PAGA Period. If you believe that you worked more workweeks or pay periods during any of the respective periods, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing**. You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.

(2) **Opt-Out of the Class Settlement**. You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement **The Opt-out Deadline is ______________**	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section **6** of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement **Written Objections Must be Submitted by ______________**	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section **7** of this Notice.
You Can Participate in the ______________ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on ______________. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by ______________	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendants' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by ______________. See Section **4** of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendants, or either of them. The Action accuses Defendants of violating California labor laws by failing to pay all wages, wages due upon termination and reimbursable expenses and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action: Tunyan Law, APC ("Class Counsel.")

Defendants strongly deny violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff are correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator, Brandon McKelvey, in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

a. <u>Defendants Will Pay $425,000.00 as the Gross Settlement Amount (Gross Settlement)</u>. Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the employee and employer share of payroll taxes and required withholdings for the Wage Portion of the Individual Class Payments to the Participating Class Members, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement not more than sixty (60) days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

b. <u>Court Approved Deductions from Gross Settlement.</u> At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

1. Up to $141,666.67 (33 and 1/3% of the Gross Settlement] to Class Counsel for attorneys' fees and up to $17,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

2. Up to $10,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive for representing the Class in this Action other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

3. Up to $10,000 to the Administrator for services administering the Settlement (estimated to be $7,950.00).

4. Up to $40,000 for PAGA Penalties, allocated 65% to the LWDA PAGA Payment and 35% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

5. The employee and employer share of payroll taxes and required withholdings for the Wage Portion of the Individual Class Payments to the Participating Class Members.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

c. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

d. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 10 % of each Individual Class Payment to taxable wages ("Wage Portion") and 90% to interest and penalties ("Non-Wage Portion.). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Both the employee and employer share of payroll taxes and required withholdings for the Wage Portion of the payments will be paid from the Gross Settlement Amount. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

e. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be transmitted to the *Cy Pres* recipient, Sierra Vista Child and Family Services, subject to approval by the Court at final approval.

f. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than ______________, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the ______________ Response Deadline. The Request for Exclusion should be a signed letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, social security number and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendants based on the PAGA Period facts alleged in the Action.

g. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.

h. Administrator. The Court has appointed a neutral company, ILYM Group, Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

i. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of another lawsuit against Defendants or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

   The Participating Class Members will be bound by the following release:

   > All Participating Class Members, on behalf of themselves and their respective former, present and future spouses, children, representatives, agents, attorneys, heirs, administrators, executors, successors, and assigns, release and discharge the Released Parties from all claims, demands, rights, liabilities, causes of action, injuries, grievances, obligations, losses, damages, penalties, interest, fines, debts, liens, liabilities, attorneys' fees, consultant's fees, expert's fees, accountant's fees, costs and any other form of relief or remedy in law or equity, of every nature and description whatsoever, known or unknown, foreseen or unforeseen, anticipated or unanticipated, suspected or unsuspected, arising from or otherwise related to the claims asserted or that could have been asserted against the Released Parties based on the factual allegations asserted in the Operative Complaint and any future amendments to the Operative Complaint, whether arising under State or other applicable law, that occurred during the Class Period ("Released Class Claims"). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

j. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendants have paid the Gross Settlement all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

   The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

   > All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release and discharge, on behalf of themselves and their respective former,

present and future spouses, children, representatives, agents, attorneys, heirs, administrators, executors, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and/or the PAGA Notice attached to the Settlement Agreement as Exhibit B.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

a. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.

b. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing $14,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.

c. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until ______________ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Workweeks and/or Pay Periods based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

a. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

b. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Leon v. Gemperle Egg Packing Co. Inc*., Case N CV-25-001398 pending in Stanislaus County Superior Court, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____________, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least 16 days before the _____________ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, approval of Counsel's Fees, Litigation Expenses and Service Payment stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _________________________ or the Court's website https://stanportal.stanct.org/search.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and Fees, Litigation Expenses and Service Payment may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____________**. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____________ at ________ in Department 21 of the Stanislaus County Superior Court, located at 801 10" Street, 6th Floor, Modesto, CA 95354. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via VCourt using the link https://stanct.portalscloud.com/VCourt/. Check the Court's website for the most current information.

It is possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website ______________________________ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to ________________________'s website at _________________________. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below or consult the Superior Court website by going to https://stanportal.stanct.org/search and entering the Case Number for the Action, Case No. CV-25-001398. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanislaus County Superior Court by calling (209) 530-3100.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:
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Artur Tunyan
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TUNYAN LAW, APC
535 N Brand Blvd. Suite 285
Glendale, California 91203
Telephone: (323) 410-5050

Settlement Administrator:
ILYM GROUP, INC.
Email Address:
Mailing Address:
Telephone:
Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

Exhibit "B"

TUNYAN LAW

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 Jaw, 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 l l(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.

<u>Failure to Authorize and Permit Rest Periods</u>

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,

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August 5, 2025

VIA ONLINE SUBMISSION
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Gemperle Egg Packing Co. Inc.
dba Gemperle Family Farms and
Gemperle Bros.
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VIA CERTIFIED MAIL
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dba Gemperle Family Farms
Bob Triebsch
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VIA EMAIL
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AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION § 2698 ET SEQ.

Re: *Leon v. Gemperle Egg Packing Co. Inc.*

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 employers Gemperle Egg Packing Co. Inc. dba Gemperle Family Farms and Gemperle Bros. dba Gemperle Family Farms ("Defendants"). 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 Defendants engaged in with respect to Plaintiff and all of Defendants' 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 Defendants 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 Defendants suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendants

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

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

Throughout Plaintiff's employment, Defendants committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendants 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. Defendants, at all relevant times, were employers or persons acting on behalf of employer(s) who violated Plaintiff’s and the 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 Jaw, 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 Defendants put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, Plaintiff also offers to Defendants to place those individuals on notice if Defendants voluntarily provide their contact information.

<u>Failure to Pay for All Hours Worked</u>

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, Defendants 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, Defendants maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to work off-the-clock without compensation. Defendants required Plaintiff and the Aggrieved Employees to don and doff off- the-clock. In particular, Defendants 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 Defendants' unlawful wage deduction. If Plaintiff and the Aggrieved Employees clocked in at least one minute later than the scheduled start of their shifts, Defendants would unlawfully decrease the hourly pay rate of that employee by $1 for the entire next one week.

Throughout the statutory period, Defendants 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, Defendants 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 Defendants' 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 Defendants' 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, Defendants has not compensated Plaintiff and the Aggrieved Employees at the proper overtime, sick pay and meal premium rate. Defendants 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.

Defendants' 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 Defendants' premises and/or subject to Defendants' 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, Defendants also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendants are 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 Defendants 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, Defendants failed to record employee's meal periods in violation of the Wage order requirements.

Defendants 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. Defendants 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, Defendants did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendants has adequate policies or practices regarding the timing of meal periods.

Throughout the statutory period, due to Defendants' 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, Defendants also failed to provide second meal periods when Plaintiff and the Aggrieved Employees worked more than 10 hours during one shift. Defendants 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 Defendants 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, Defendants' 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 Defendants' failure to provide lawful meal periods, Defendants 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 Defendants' 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, Defendants 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, Defendants 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). Defendants, 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, Defendants are 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 l l(A) and (C) along with all applicable IWC Wage Orders. These violations subject Defendants 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. Defendants' 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.

Defendants, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants 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. Defendants did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the timing of rest periods. Defendants did not inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Defendants 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, Defendants' 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). Defendants, 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, Defendants are 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 Defendants 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

<u>Failure to Maintain Accurate Records of Hours Worked</u>

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.

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

Defendants' 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 Defendants' 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 Defendants. 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 Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' 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, Defendants are 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. Defendants' 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 Defendants 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, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants 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. Defendants 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 Defendants, and Defendants 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, Defendants 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 Defendants' employ. These unpaid wages include wages for unpaid work time (including minimum, straight time and overtime wages), missed meal periods, and missed rest periods.

Defendants’ 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 Defendants 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, Defendants are 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, Defendants 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).

Defendants intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify Defendants’ 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 Defendants 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 Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding $4,000 dollars per employee.

Moreover, Defendants are 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, Defendants 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 Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendants are 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, Defendants failed to provide proper paid sick leave to Plaintiff and the Aggrieved Employees. Defendants 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, Defendants 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, Defendants 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, Defendants 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, Defendants 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, Defendants 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.

Defendants unlawfully retained and continue to retain paid sick leave that should have been paid but was not, as a result of Defendants’ 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 Defendants' 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. Defendants 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, Defendants 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, Defendants' 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 Defendants to civil penalties under Labor Code §§ 1197.1 and 2699.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendants 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.

Defendants have 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 Defendants 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 Defendants 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