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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SANTA CLARA
12

13 Plaintiff AURELIO LANDA, on behalf of himself
14 and all others similarly situated,

15 Plaintiff,

16 vs.

17 CHRISTOPHER RANCH, LLC, a California
Corporation, B & A INTERNATIONAL FARM
18 LABOR SERVICES, INC. and DOES 1 through
20, inclusive,

19 Defendants.
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ENDORSED

2015 SEP 30 P 3:13

FILED THROUGH E-FILE
BY **406490**

Case No. **115CV286346**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay Minimum Wages
2. Failure to Provide Timely and Complete Rest Periods or Pay Additional Wages in Lieu Thereof
3. Failure to Pay Wages of Terminated or Resigned Employees
4. Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions
5. Violation of Unfair Competition Law
6. PAGA - Labor Code § 2699 *et seq.*

DEMAND FOR JURY TRIAL

BY FAX

1 1. Plaintiff AURELIO LANDA ("Plaintiff") brings this action against
2 CHRISTOPHER RANCH, LLC, B & A INTERNATIONAL FARM LABOR SERVICES, INC.,
3 and DOES 1-20 (collectively "Defendants"), individually and on behalf of all other similarly
4 situated individuals employed under common circumstances and facts. The allegations made in
5 this Complaint are based on the knowledge of Plaintiff AURELIO LANDA, except those
6 allegations made on information and belief, which are based on the investigation of his counsel.

7
8 **I. NATURE OF THE ACTION**

9 2. This is a wage and hour class action to vindicate the rights afforded employees by
10 California labor law. This action is brought by Plaintiff AURELIO LANDA for himself and on
11 behalf of a Class of similarly situated individuals against Defendants CHRISTOPHER RANCH,
12 LLC, B & A INTERNATIONAL FARM LABOR SERVICES, INC., and DOES 1 through 20,
13 inclusive (hereinafter collectively referred to as "Defendants"). Plaintiff's California Private
14 Attorney General Act, Labor Code §§ 2698 *et seq.* ("PAGA") claim is brought as an enforcement
15 action on behalf of the state for penalties and other remedies on behalf of the State of California
16 and current and former employees as expressly permitted by that statute. All PAGA administrative
17 requirements will have been met for this purpose prior to service of this complaint.

18 3. This action revolves around the systematic failure by Defendants to pay California
19 non-exempt employees, including Plaintiff and the Class, in conformance with California law.
20 Defendants CHRISTOPHER RANCH, LLC, B & A INTERNATIONAL FARM LABOR
21 SERVICES, INC. (and some Does) have employed Plaintiff and the Class directly or as agents of
22 one another and is referred to herein as "EMPLOYER DEFENDANTS." Plaintiff alleges that
23 CHRISTOPHER RANCH, LLC, B & A INTERNATIONAL FARM LABOR SERVICES, INC.,
24 and some Does are a "persons" who violated or caused to be violated California Labor Code § 558,
25 § 1197.1, and IWC Wage Orders. As such, Defendant CHRISTOPHER RANCH, LLC, B & A
26 INTERNATIONAL FARM LABOR SERVICES, INC., and some Does are liable for penalties and
27 wages which Plaintiffs may seek through PAGA for themselves, current and former employees,
28 and the State of California and are sued solely pursuant to PAGA. Some Defendant Does,

1 CHRISTOPHER RANCH, LLC, and B & A INTERNATIONAL FARM LABOR SERVICES,
2 INC., are collectively hereinafter referred to as the "PAGA DEFENDANTS."

3 4. The core violations Plaintiff alleges against the EMPLOYER DEFENDANTS are:
4 (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure
5 to provide timely and complete meal periods, and/or provide appropriate compensation in lieu
6 thereof; (4) failure to provide timely, complete, and paid rest periods, and/or provide appropriate
7 compensation in lieu thereof; and (5) failure to reimburse necessary expenses incurred.

8 5. DEFENDANTS have refused to pay the wages due and owed to Plaintiff and Class
9 members under the express provisions of the California Labor Code, which in turn has resulted in
10 additional Labor Code violations entitling Plaintiff and the Class to prompt payment of wages and
11 penalties. The PAGA DEFENDANTS caused the violations at issue and benefitted financially
12 and/or professionally from these violations.

13 6. As a result of the violations alleged herein, all Defendants are subject to PAGA
14 penalties, which Plaintiff seeks in this lawsuit for himself, EMPLOYER DEFENDANTS' current
15 and former employees, and the State of California. Plaintiff is an aggrieved employees within the
16 meaning of Labor Code §§ 2698 *et seq.*

17 7. Plaintiff, for himself and the Class, also seeks injunctive relief requiring each
18 Defendant to comply with all applicable California labor laws and regulations in the future and
19 preventing the EMPLOYER DEFENDANTS from engaging in and continuing to engage in
20 unlawful and unfair business practices. Plaintiff also seeks declaratory relief enumerating
21 Defendants' violations so that the Defendants and the general public will have clarity and guidance
22 with regards to Defendants' future employment practices.

23 24 **II. JURISDICTION AND VENUE**

25 8. This case is subject to the jurisdiction of this court pursuant to the California Labor
26 Code, California Business and Professions Code, and California Code of Civil Procedure.
27 Employer Defendant CHRISTOPHER RANCH, LLC is California Corporations, businesses, or
28 DBA doing acts in Santa Clara County, California. Employer Defendants are qualified to do

1 business in California and regularly conduct business in Santa Clara County, California.

2 9. Federal courts may not exercise jurisdiction over this case pursuant to the Class
3 Action Fairness Act of 2005. Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of Title
4 28 of the United States Code)(“CAFA”) because, as of the date of the filing and service of this
5 complaint and on information and belief, more than two-thirds of the members of all proposed
6 plaintiff classes in the aggregate, and the primary defendants, are citizens of California, the State in
7 which the action was originally filed. Alternatively, this case is not subject to jurisdiction in
8 federal court pursuant to CAFA because: (a) more than two-thirds of the members of the proposed
9 plaintiff class(es) in the aggregate are citizens of California where this case is originally filed; (b)
10 significant relief is sought from Defendants by members of the plaintiff Class whose alleged
11 conduct forms a significant basis for the claims asserted by the proposed plaintiff class, (c) the
12 Defendants are citizens of California; (d) principal injuries resulting from the alleged conduct or
13 related conduct of Defendants was incurred in California, and (e) on information in belief, during
14 the 3-year period preceding the filing of this class action, no other class action has been filed
15 asserting the same or similar factual allegations against Defendants on behalf of the same or other
16 persons.

17 10. Venue is proper in this County because, pursuant to Code of Civil Procedure § 395,
18 the County of Santa Clara is the county in which Defendants CHRISTOPHER RANCH, LLC does
19 business and where the underlying policy decisions to intentionally violate and permit the violation
20 of the California Labor Code, and California Business and Professions Code are made.

21 **III. PARTIES**

22 ***Plaintiff***

23 11. Plaintiff LANDA is a resident of Fresno County, California. At relevant times
24 herein, he has been employed directly or jointly by CHRISTOPHER RANCH, LLC, B & A
25 INTERNATIONAL FARM LABOR SERVICES, INC. and Employer Does, as an employee on
26 land owned, leased, and/or operated by CHRISTOPHER RANCH, LLC, and has been employed
27 by Defendants as a non-exempt employee. During the relevant time period, LANDA worked for
28 Defendants, performing agricultural work at various times during the Class Period to present, at

1 piece rate wage rates that varied over his period of employment. Plaintiff LANDA is an aggrieved
2 employee who has been subjected to the violations and unlawful employment practices described
3 herein, and who, as a result, has suffered injury in fact and loss of money and property.

4 12. Plaintiff and the employees whom Plaintiff seeks to represent were regularly
5 subjected to, or had personal knowledge of, the violations described in this Complaint.

6 *Defendant*

7 13. The following allegations as to DEFENDANTS are made on information and belief,
8 and are likely to have evidentiary support after a reasonable opportunity for further investigation or
9 discovery.

10 14. At all times relevant, CHRISTOPHER RANCH, LLC, (hereinafter
11 "CHRISTOPHER RANCH"), a California corporation, conducted and conducts business in Santa
12 Clara County and maintains a business address of 305 BLOOMFIELD AVE, Gilroy, California
13 95020. At all times relevant, CHRISTOPHER RANCH owned, controlled, or operated a business
14 or establishment that employed or jointly employed persons within the meaning of Industrial
15 Welfare Commission Order No. 14, 8 Cal. Code of Regs. § 11140, Industrial Welfare Commission
16 Order No. 13, 8 Cal. Code of Regs. § 11130, and/or Industrial Welfare Commission Order No. 8, 8
17 Cal. Code of Regs. § 11180, and operated as a direct or joint employer of Class members in this
18 case. During all relevant times alleged herein, CHRISTOPHER RANCH employed or jointly
19 employed Plaintiff LANDA, and similarly situated persons as non-exempt employees, and
20 committed in California and in this County the acts and/or caused the violations complained of
21 herein.

22 15. At all times relevant, B & A INTERNATIONAL FARM LABOR SERVICES,
23 INC., (hereinafter "B & A"), a California corporation, conducted and conducts business in Fresno
24 County and maintains a business address of 1616 W. SHAW AVE. SUITE D7, Fresno, California
25 93711. At all times relevant, B & A owned, controlled, or operated a business or establishment that
26 employed or jointly employed persons within the meaning of Industrial Welfare Commission
27 Order No. 14, 8 Cal. Code of Regs. § 11140, Industrial Welfare Commission Order No. 13, 8 Cal.
28 Code of Regs. § 11130, and/or Industrial Welfare Commission Order No. 8, 8 Cal. Code of Regs.

1 § 11180, and operated as a direct or joint employer of Class members in this case. During all
2 relevant times alleged herein, B & A employed or jointly employed Plaintiff LANDA, and
3 similarly situated persons as non-exempt employees, and committed in California and in this
4 County the acts and/or caused the violations complained of herein.

5 16. CHRISTOPHER RANCH, B & A, and Employer Does are joint employers of
6 Plaintiff and the class.

7 17. Plaintiff is informed and believe, and based thereon allege, that each Defendant
8 acted in all respects pertinent to this action as the agent of the other Defendants including does ,
9 carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of
10 each Defendant are legally attributable to the other Defendants. "Defendants" herein means each
11 of the defendants as well as all of them.

12
13 **IV. FACTUAL BACKGROUND**

14 18. The claims of this lawsuit spring from a pattern of employer misconduct and
15 wrongdoing that has characterized the labor system in much of the agricultural industry, where
16 unpaid and improperly paid labor, as alleged herein, are commonplace and regular practices. The
17 Defendants herein are growers, harvesters and packers of garlic, a seasonal crop. The unlawful
18 practices and policies alleged are widespread and entrenched in the industry. The practices of the
19 industry are uniform, or nearly uniform among many of the major garlic growers, at least in part
20 due to grower organizations that spread improper employment practices. The following paragraphs
21 detail specific violations of law comprising the wage-related claims applicable to employees that
22 Plaintiff seeks to represent on a class and PAGA basis.

23 19. For at least four years prior to the filing of this action and through to the present,
24 Defendants and their subsidiaries, parents, or affiliate companies have maintained and enforced
25 unlawful labor policies against employees that revolve around Defendants' piece rate system of
26 compensation, their meal and rest break practices, and their record-keeping procedures.

27 20. Under the piece rate policy, Defendants fail to compensate for all "hours worked"
28 (within the meaning of the Wage Orders) and fail to pay overtime premium wages for work

1 performed in the fields. This includes, but is not limited to, regular hours worked that were not
2 compensated at minimum or agreed upon rates, overtime hours worked that were either not
3 compensated, or compensated at rates lower than the applicable overtime premium wage rate
4 and/or without properly calculating the regular rate of pay for purposes of paying overtime,
5 uncompensated or undercompensated time spent on statutory rest breaks, work meetings, and other
6 activities. By their conduct, Defendants make clear that they are intentionally and maliciously
7 subverting California's minimum and overtime wage requirements, resulting in Plaintiff and the
8 Class loss of property that occur as a result of Defendants' payroll policies.

9 21. Under the meal period policies, Defendants fail to provide employees: (a) at least
10 one (1) meal period for shifts greater than five hours and/or two (2) meal periods for shifts greater
11 than ten hours, (b) net thirty minute meal periods, (c) timely meal periods, and/or (d) off-duty meal
12 periods. Further, Defendants' policy is to not pay the premium wages owed to workers for missed
13 and untimely meal periods.

14 22. Under the rest break policies, Defendants fail to provide employees: (a) at least two
15 (2) rest breaks for shifts greater than six hours, and/or three (3) rest breaks for shifts greater than
16 ten hours, (b) net ten minute rest breaks, (c) timely rest breaks, and (d) paid rest breaks. Further,
17 Defendants' policy is to not pay the premium wages owed to workers for missed, untimely and
18 unpaid rest breaks.

19 23. Under the record-keeping policies, Defendants willfully provide inaccurate itemized
20 wage statements that do not reflect all "hours worked," wages earned and applicable pay rates.
21 Defendants also fail to maintain accurate time-keeping records.

22 24. Plaintiff, on behalf of himself and all other non-exempt employees employed by, or
23 formerly employed by Defendants (hereinafter referred to as "Class Members"), brings this action
24 pursuant to California Labor Code §§ 201, 202, 203, 204, 205.5, 214, 216, 218, 218.6, 221, 226,
25 226.7, 512, 1174, 1194, 1194.2, 1197, 1199, and Business & Professions Code §§ 17200 *et seq.* (as
26 well as the derivative penalty provisions pursuant to PAGA) seeking unpaid and underpaid wages,
27 unpaid rest period compensation, statutory penalties, liquidated damages, declaratory, injunctive
28 and other equitable relief, reasonable attorneys' fees and costs of suit, injunctive relief, declaratory

1 relief, restitution, and disgorgement of all profits or benefits retained by Defendants as a result of
2 their failure to comply with the above laws. Plaintiff has followed the procedural requirements
3 detailed in Labor Code § 2698 *et seq.* and, therefore, also seeks civil penalties (including unpaid
4 wages) on behalf of himself, the State of California, and all current and former employees).

5 25. Plaintiff alleges that the Employer Defendants (including some Does), and each of
6 them, are employers with respect to any Plaintiff or Class Members.

7 26. On information and belief, Defendants were on notice of the improprieties alleged
8 herein by their employees, Plaintiff and the Class he seeks to represent, and intentionally refused to
9 rectify their unlawful policies.

10 27. Defendants' failure to compensate non-exempt employees for all "hours worked,"
11 failure to authorize and permit requisite meal and rest periods and paid rest periods, failure to pay
12 premium meal and rest period wages, failure to pay for all hours worked at the regular rate or
13 required overtime premium rate, and failure to pay wages at termination, in addition to the other
14 violations alleged above, during all relevant times herein was willful and deliberate.

15 28. Defendants have made it difficult to account with precision for the unlawfully
16 withheld wages due to Defendants' non-exempt employees, including Plaintiff, during all relevant
17 times herein, because they have not implemented an adequate record-keeping method to record all
18 hours worked and wages earned by their employees as required for non-exempt employees by
19 California Labor Code §§ 226 and 1174(d).

20 29. Defendants have failed to comply with California Labor Code § 226(a) by failing to
21 itemize in wage statements all wages earned and by failing to accurately report total hours worked
22 by Plaintiff and the members of the proposed class. Plaintiff and Class Members are therefore
23 entitled to statutory penalties not to exceed \$4,000 for each employee pursuant to Labor Code
24 § 226(e).

25
26 **V. CLASS ACTION ALLEGATIONS**

27 28. Plaintiff brings this action on behalf of himself and all others similarly situated as a
28 class action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the

1 following "Class" composed of and defined as follows:

2 All persons who are or have been employed or jointly employed by
3 Chrisotpher Ranch, B & A and/or DOES in the State of California at any
time within four (4) years of the filing of the Initial Complaint in this action.

4 29. Plaintiff reserves the right under Rule 1855(b), California Rules of Court, to amend
5 or modify the class description with greater specificity to further divide into subclasses or to limit
6 to particular issues.

7 30. This action has been brought and may properly be maintained as a class action
8 under the provisions of §382 of the Code of Civil Procedure because there is a well-defined
9 community of interest in the litigation and the proposed Class is easily ascertainable.

10 **A. Numerosity**

11 31. The potential members of the Class as defined are so numerous that joinder of all
12 the members of the Class is impracticable. While the precise number of Class Members has not
13 been determined at this time, Plaintiff is informed and believes that Defendants have employed
14 dozens of agricultural and packing shed employees in the State of California and who are, or have
15 been, affected by Defendants' unlawful practices as alleged herein.

16 32. Upon information and belief, Plaintiff alleges that Defendants' employment records
17 would provide information as to the number and location of all Class Members. Joinder of all
18 members of the proposed Class is not practicable.

19 **B. Commonality**

20 33. There are questions of law and fact common to the Classes predominating over any
21 questions affecting only individual Class Members. These common questions of law and fact
22 include, without limitation:

- 23 a. Whether Defendants violated California Labor Code and applicable wage
24 orders by not properly compensating Class members, including Plaintiff, for
25 all hours worked;
- 26 b. Whether Defendants violated California Labor Code and applicable wage
27 orders by compensating Class members, including Plaintiff, at piece rates
28 below the applicable minimum and premium wage rates;

- 1 c. Whether Defendants violated California Labor Code and applicable wage
2 orders by (i) failing to provide Class members, including Plaintiff, timely
3 meal periods of at least thirty (30) minutes per five (5) hours worked, (ii)
4 failing to provide net thirty (30) minute meal periods because of time spent
5 working through meal periods and/or walking to and from the work areas to
6 designated break areas; and (iii) failing to compensate employees an
7 additional hour of pay in lieu of meal periods, in violation of California law
8 and public policy;
- 9 d. Whether Defendants violated California Labor Code and applicable wage
10 orders by (i) failing to provide Class members, including Plaintiff, paid daily
11 rest breaks at the rate of one rest period for shifts between 3.5 and 6 hours,
12 two rest breaks for shifts greater than 6 hours up to 10 hours, three rest
13 breaks for shifts greater than 10 hours up to 14 hours, and so on, (ii) failing
14 to schedule paid rest breaks on either side of the meal break for shifts greater
15 than six hours up to 10 hours, (iii) failing to authorize and permit *paid* rest
16 breaks to employees while working "off the clock", and (iv) failing to
17 compensate employees an additional hour of pay in lieu of rest breaks, in
18 violation of California law and public policy;
- 19 e. Whether Defendants violated California Labor Code and applicable wage
20 orders by failing to indemnify Plaintiff and the Class he seeks to represent
21 for all necessary business expenditures, including mileage and travel
22 expenses incurred while traveling to and from work sites during shifts;
- 23 f. Whether Defendants violated California Labor Code and applicable wage
24 orders by failing to, among other violations, maintain accurate records of
25 employees' earned wages and work periods, properly itemize in wage
26 statements all hours worked and wages earned, and accurately maintain
27 records pertaining to Plaintiff and the Class he seeks to represent;
- 28 g. Whether Defendants violated California Labor Code and applicable wage

1 orders by failing to pay all earned wages and/or premium wages due and
2 owing at the time that Plaintiff's or any Class member's employment with
3 Defendants terminated;

4 h. Whether Defendants violated § 17200 *et seq.* of the California Business and
5 Professions Code by unlawfully deducting wages, or failing to pay wages to
6 non-exempt employees and converting same to Defendants' own use;
7 unlawfully requiring non-exempt employees to work at wage rates below the
8 minimum and premium overtime wage and converting same to Defendants'
9 own use; failing to provide proper meal periods without compensating non-
10 exempt employees one hour's pay for each instance such periods were not
11 provided and converting same to Defendants' own use; failing to provide
12 paid proper rest periods without compensating non-exempt employees one
13 hour's pay for each instance such periods were not provided and converting
14 same to Defendants' own use; failing to pay wages and compensation for
15 denied rest periods due and owing at the time a Class Member's
16 employment with Defendants terminated; and failing to keep accurate
17 records causing injury to employees;

18 i. Whether Defendants violated § 17200 *et seq.* of the Business and
19 Professions Code by violating the fundamental public policy underlying the
20 California Labor Code and applicable wage orders;

21 j. Whether Plaintiff and the Class Members are entitled to declaratory,
22 injunctive and other equitable relief pursuant to Business and Professions
23 Code § 17200, *et seq.*

24 k. Whether Plaintiff and the Class Members are entitled to damages,
25 restitution, statutory penalties, declaratory, injunctive and declaratory relief,
26 attorney's fees and costs, and other relief pursuant to the California Labor
27 Code, the applicable wage orders, and Business and Professions Code
28 § 17200, *et seq.*

1 **C. Typicality**

2 34. The claims of the named Plaintiff are typical of the claims of the Classes. Plaintiff
3 and all members of the Classes sustained injuries and damages arising out of and caused by
4 Defendants' common course of conduct in violation of California laws, regulations, and statutes as
5 alleged herein.

6 **D. Adequacy of Representation**

7 35. Plaintiff will fairly and adequately represent and protect the interests of the
8 members of the Classes. Counsel who represent Plaintiff are competent and experienced in
9 litigating large employment class actions.

10 **E. Superiority of Class Action**

11 36. A class action is superior to other available means for the fair and efficient
12 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
13 questions of law and fact common to the Class predominate over any questions affecting only
14 individual members of the Classes. Each member of the proposed Classes has been damaged and
15 is entitled to recovery by reason of Defendants' unlawful policy and/or practice of failing to
16 compensate Class Members for all wages earned and engaging in the unlawful practices herein
17 complained of, and denying Class Members rest and meal periods without legal compensation.

18 37. Class action treatment will allow those similarly situated persons to litigate their
19 claims in the manner that is most efficient and economical for the parties and the judicial system.
20 It is unlikely that individual class members have any interest in individually controlling separate
21 actions in this case. Class members' lack of knowledge of the legal system and limited economic
22 resources would deprive most class members of the practical opportunity to pursue their claims
23 were this class action not certified.

24 38. Plaintiff is unaware of any difficulties that are likely to be encountered in the
25 management of this action that would preclude its maintenance as a class action. The benefits of
26 maintaining this action on a class basis far outweigh any administrative burden in managing the
27 class action. Conducting the case as a class action would be far less burdensome than prosecuting
28 numerous individual actions.

1 **VI. CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 **FAILURE TO PAY MINIMUM WAGES**

4 **(CAL. LABOR CODE §§1194, 1194.2, 510, 1197, WAGE ORDERS 8, 13, AND 14)**

5 **(PLAINTIFF AGAINST ALL DEFENDANTS)**

6 39. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

7 40. California Labor Code §1197, entitled "Pay of Less Than Minimum Wage," states:

8 The minimum wage for employees fixed by the commission is the minimum
9 wage to be paid to employees, and the payment of a less wage than the
minimum so fixed is unlawful.

10 41. The applicable minimum wage fixed by the commission for agricultural workers
11 (Wage Orders 8, 13 & 14) was set at \$8.00 per hour for all hours worked effective January 1, 2008,
12 but has been amended. The minimum wage has been raised to \$9.00 per hour, effective July 1,
13 2014 and will rise to \$10.00 on January 1, 2016.

14 42. The Defendants failed to pay minimum wages for "all hours worked." In particular,
15 Plaintiff and the Class were required to work "off the clock" by, for example, arriving early for set
16 up, driving to and from work sites during shifts, and work at hourly wage or piece rates below
17 minimum wage, or uncompensated work while doing piece rate work.

18 43. As a result of Defendants' violations of the minimum wage, by failing to record and
19 pay minimum wage for all hours worked, Defendants violated California Labor Code § 226(a),
20 inaccurately stating gross wages earned, total hours work, deductions, net wages and other issues
21 as described above.

22 44. Defendants have the ability to pay minimum wages for all time worked but have
23 willfully refused to pay such wages, intending to secure instead a discount upon their indebtedness
24 to Plaintiffs and the Class for all hours worked, and intending to annoy harass, oppress, hinder
25 delay or defraud Plaintiffs and the Class, in violation of California Labor Code § 226.6.

26 45. California Labor Code § 226.6 states:

27 Any employer who knowingly and intentionally violates the provisions of
28 Section 226 or 226.2, or any officer, agent, employee, fiduciary, or other
person who has the control, receipt, custody, or disposal of, or pays, the
wages due any employee, and who knowingly and intentionally participates

1 or aids in the violation of any provision of Section 226 or 226.2 is guilty of a
2 misdemeanor and, upon conviction thereof, shall be fined not more than one
3 thousand dollars (\$1,000) or be imprisoned not to exceed one year, or both,
at the discretion of the court. That fine or imprisonment, or both, shall be in
addition to any other penalty provided by law.

4 46. Defendants' violation of § 226 also constitutes a misdemeanor, pursuant to §226.6,
5 a predicate violation of California Business & Profession Code §§ 17200 *et seq.*, and a predicate
6 violation of Labor Code §2699.

7 47. The Minimum Wage provisions of California Labor Code are enforceable by
8 private civil action pursuant to California Labor Code § 1194(a), which states:

9 Notwithstanding any agreement to work for a lesser wage, any employee
10 receiving less than the legal minimum wage or the legal overtime
11 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.

12 As such, Plaintiff and the Class may bring this action for minimum wages, interest, costs of suit
13 and attorney's fees pursuant to California Labor Code § 1194(a).

14 48. As described in California Labor Code § 1194.2, any such action incorporates the
15 applicable wage order of the California Labor Commission. California Labor Code § 1194.2
16 states:

17 In any action under Section 1194 ... to recover wages because of the
18 payment of a wage less than the minimum wages fixed by an order of the
commission, an employee shall be entitled to recover liquidated damages in
19 an amount equal to the wages unlawfully unpaid and interest thereon.

20 49. As described herein, this is an action under California Labor Code § 1194 to recover
21 wages on account of Defendants' failure to pay minimum wages as described in California Labor
22 Code §§ 1197, 1194(a), 1194.2 and any applicable wage orders, including IWC Orders 8, 13, and
23 14. Therefore, Plaintiff and the Class are also entitled to recover liquidated damages in an amount
24 equal to the wages unlawfully unpaid and interest thereon.

25 50. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

1 **SECOND CLAIM FOR RELIEF**

2 **FAILURE TO PROVIDE PROPER TIMELY PAID REST PERIODS OR**
3 **COMPENSATION IN LIEU THEREOF**

4 **(CAL. LABOR CODE §§226.7, 512, WAGE ORDERS 8, 13, AND 14)**

5 **(PLAINTIFF AGAINST ALL DEFENDANTS)**

6 51. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

7 52. Plaintiff alleges that the Class Members were not provided full statutory ten minute
8 rest periods while in the employ of Defendants.

9 53. California Labor Code § 226.7 states:

10 (a) No employer shall require any employee to work during any meal or rest period
11 mandated by an applicable order of the Industrial Welfare Commission.

12 (b) If an employer fails to provide an employee a meal period or rest period in
13 accordance with an applicable order of the Industrial Welfare Commission, the
14 employer shall pay the employee one additional hour of pay at the employee's regular
15 rate of compensation for each work day that the meal or rest period is not provided.

16 54. The applicable IWC Wage Orders state in regard to rest breaks:

17 (A) Every employer shall authorize and permit all employees to take rest periods,
18 which insofar as practicable shall be in the middle of each work period. The
19 authorized rest period time shall be based on the total hours worked daily at the rate
20 of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
21 a rest period need not be authorized for employees whose total daily work time is less
22 than three and one-half (3 1/2) hours. Authorized rest period time shall be counted
23 as hours worked for which there shall be no deduction from wages.

24 (B) If an employer fails to provide an employee a rest period in accordance with the
25 applicable provisions of this Order, the employer shall pay the employee one (1) hour
26 of pay at the employee's regular rate of compensation for each workday that the rest
27 period is not provided.

28 A similar provision is contained in Labor Code § 512.

55. Employees are entitled to at least one rest break for shifts from 3.5 to 6 hours, two
rest breaks for shifts greater than 6 hours up to 10 hours, and three rest breaks for shifts greater
than 10 hours. For normal shifts the first rest break must occur before the meal break and the
second rest break after the meal break, unless other factors render such schedule impracticable.

56. Defendants violated the applicable Wage Order and California Labor Code § 226.7

1 by failing to authorize and permit the appropriate number of rest breaks, failing to provide net ten
2 minute rest breaks, failing to schedule rest breaks timely, failing to authorize and permit paid rest
3 breaks and failing to pay additional rest break wages. On information and belief, it was not
4 impracticable for Defendants to schedule rest breaks appropriately.

5 57. On information and belief, Plaintiff and the Class Members they seek to represent
6 did not voluntarily or willfully waive rest periods. Any express or implied waivers obtained from
7 Plaintiff and/or Class Members were not willfully obtained, were not voluntarily agreed to, were a
8 condition of employment, or part of a contract of an unlawful adhesion. On information and belief,
9 during the meal and rest period liability period, Defendants did not permit or authorize Plaintiff
10 and Class Members to take proper timely paid rest periods.

11 58. By failing to keep adequate time records required by §§ 226(a) and 1174(d) of the
12 Labor Code, Defendants have injured Plaintiffs and Class Members and made it difficult to
13 calculate the unpaid rest period compensation due Plaintiffs and Class Members.

14 59. As a result of the unlawful acts of Defendants' actions, Plaintiffs and the Class they
15 seek to represent have been deprived of premium wages in amounts to be determined at trial, and
16 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
17 costs, under Labor Code §§ 203, 226, 226.7, and 1194.

18 60. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

19 **THIRD CLAIM FOR RELIEF**

20 **FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION**
21 **(CAL. LABOR CODE §§201, 202, 203)**

22 **(PLAINTIFF AGAINST ALL DEFENDANTS)**

23 61. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

24 62. California Labor Code Section 201 states:

25 (a) If an employer discharges an employee, the wages earned and unpaid at the time
26 of discharge are due and payable immediately...

27 63. California Labor Code Section 202(a) states:

28 If an employee not having a written contract for a definite period quits his or her
employment, his or her wages shall become due and payable not later than 72 hours

1 thereafter, unless the employee has given 72 hours previous notice of his or her
2 intention to quit, in which case the employee is entitled to his or her wages at the time
of quitting. . . .

3 64. As described above, Defendants failed to timely pay Plaintiff and the Class
4 Members all of their wages due for work performed and this failure continued through the time in
5 which Plaintiffs and Class Members quit or were discharged from their employment with
6 Defendants. As a result, Defendants have violated California Labor Codes §§ 201 and 202.

7 65. California Labor Code § 203 states:

8 If an employer willfully fails to pay, without abatement or reduction, in accordance
9 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
10 discharged or who quits, the wages of the employee shall continue as a penalty from
11 the due date thereof at the same rate until paid or until an action therefor is
12 commenced; but the wages shall not continue for more than 30 days. An employee
13 who secretes or absents himself or herself to avoid payment to him or her, or who
refuses to receive the payment when fully tendered to him or her, including any
penalty then accrued under this section, is not entitled to any benefit under this section
for the time during which he or she so avoids payment.

14 Suit may be filed for these penalties at any time before the expiration of the statute of
15 limitations on an action for the wages from which the penalties arise.

16 66. The statute of limitations for an action for the wages at issue is four years pursuant
17 to California Business and Professions Code § 17200. Defendants violated California Labor Code
18 §§ 201 and 202 by failing to pay employees who quit or were discharged all of the wages due
19 pursuant to the timelines provided in those sections. Defendants willfully failed to pay all wages
20 due as the failure to pay was not inadvertent or accidental. As a result, Plaintiff is entitled to thirty
21 (30) days' wages including overtime.

22 67. Plaintiffs and the Class they seek to represent are entitled to compensation for all
23 forms of wages earned, including, but not limited to, compensation for unprovided rest periods and
24 unprovided meal periods, and compensation for work done "off the clock" and/or at hourly rates
25 below the minimum wage, and other owed wages but to date have not received such compensation
26 therefore entitling them to Labor Code § 203 penalties.

27 68. More than thirty (30) days have passed since affected Class Members have left
28 Defendants' employ, and on information and belief, have not received payment pursuant to Labor

1 Code § 203. As a consequence of Defendants' willful conduct in not paying all earned wages,
2 Plaintiffs and certain Class Members who are no longer employed by Defendants are entitled to
3 thirty (30) days' wages as a penalty under Labor Code § 203 for failure to pay legal wages,
4 together with interest thereon and attorneys' fees and costs.

5 69. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

6 **FOURTH CLAIM FOR RELIEF**

7 **KNOWING AND INTENTIONAL FAILURE TO COMPLY**
8 **WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS**
9 **(CAL. LABOR CODE §§226(B), 1174, 1175)**

10 **(PLAINTIFF AGAINST ALL DEFENDANTS)**

11 70. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

12 71. California Labor Code Section 226(a) states:

13 Every employer shall, semimonthly or at the time of each payment of wages, furnish
14 each of his or her employees, either as a detachable part of the check, draft, or voucher
15 paying the employee's wages, or separately when wages are paid by personal check
16 or cash, an accurate itemized statement in writing showing

17 (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number
18 of piece-rate units earned and any applicable piece rate if the employee is paid on a
19 piece-rate basis . . . (5) net wages earned, . . .

20 72. Defendants failed to provide "accurate itemized statements" to employees because
21 the wage statements:

22 a. Falsely understated Plaintiffs' and the Class Members' gross and net wages
23 earned by failing to pay for all hours worked and for premium wages;

24 b. Falsely understated the total hours worked by Plaintiffs and the Class
25 Members by ignoring the total of hours actually worked;

26 c. Falsely understated Plaintiffs' and Class Members' "number of hours
27 worked at each hourly rate."

28 d. Failed to provide accurate applicable piece rate information

73. California Labor Code §§ 226(e) and (g) provide for the remedy for the violations
described above:

(e) 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

1 occurs and one hundred dollars (\$100) per employee for each violation in a
2 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
3 (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

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

6 74. In addition, Section 1174(d) of the California Labor Code, and Section 7 of the
7 applicable Wage Orders, require Defendants to maintain and preserve, in a centralized location,
8 among other items, records showing the names and addresses of all employees employed, payroll
9 records showing the hours worked daily by and the wages paid to its employees. Defendants have
10 created a uniform practice of knowingly and intentionally failing to fully comply with Labor Code
11 § 1174. Defendants', and each of their, failure to comply with Labor Code § 1174 is unlawful
12 pursuant to Labor Code § 1175. When an employer fails to keep such records, employees may
13 establish the hours worked solely by their testimony and the burden of overcoming such testimony
14 shifts to the employer. *Hernandez v. Mendoza*, 199 Cal. App. 3d 721 (1988).

15 75. By failing to keep adequate time records required by sections 226 and 1174 (d) of
16 the Labor Code, Defendants have injured Plaintiffs and Class Members and made it difficult to
17 calculate the unpaid rest and meal period compensation due Plaintiffs and Class Members and are
18 entitled up to \$4,000.00 per Class Member.

19 76. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

20 **FIFTH CLAIM FOR RELIEF**

21 **VIOLATION OF UNFAIR COMPETITION LAW**
22 **(CAL. BUS. & PROF. CODE §§17200 ET SEQ.)**

23 **(PLAINTIFF AGAINST ALL DEFENDANTS)**

24 77. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

25 78. As described above, Defendants have violated the following California laws and all
26 others referred to implicitly or expressly in this complaint:

- 27 a. violation of California Labor Code § 201 (relating to the failure to pay wages upon
28 discharge);
- b. violation of California Labor Code § 202 (relating to the failure to pay wages upon

1 quitting);

2 c. violation of California Labor Code § 203 (relating to the failure to pay wages upon
3 termination of employment);

4 d. violation of California Labor Code § 205.5 (relating to the failure to pay all wages
5 owing twice during each calendar month);

6 e. violation of California Labor Code § 206 (relating to the failure to pay uncontested
7 wages);

8 f. violation of California Labor Code § 226 (relating to providing correct wage
9 statements and keeping correct records);

10 g. violation of California Labor Code § 226.7 (relating to proper compliance with rest
11 and meal period requirements and the failure to pay premium wages when the rest
12 and meal break requirements are not met);

13 h. violation of California Labor Code § 510 (relating to the failure to compensate at
14 the regular rate "all hours worked," and at the rate of no less than one and one-half
15 times the regular rate of pay for all work in excess of ten hours in one workday and
16 any work in excess of 60 hours in any workweek);

17 i. violation of California Labor Code § 1194 (relating to failure to pay minimum
18 and/or overtime wages for all hours worked);

19 j. violation of California Labor Code § 1194.2 (relating to liquidated damages for
20 failure to pay minimum wages for all hour worked);

21 k. violation of California Labor Code § 1197 (relating to failure to pay at least the
22 minimum wage for all hours worked);

23 79. Defendants' activities also constitute unfair business practices in violation of Cal.
24 Bus. & Prof. Code §§ 17200 *et seq.*, because Defendant's practices violate the above noted laws,
25 and/or violate an established public policy and/or the practice is immoral, unethical, oppressive,
26 unscrupulous and substantially injurious to Plaintiff, the public, and the Classes.

27 80. Plaintiff and Class Members are entitled to injunctive and other equitable relief
28 against such unlawful practices in order to prevent future damage, for which there is no adequate

1 remedy at law, and to avoid a multiplicity of lawsuits.

2 81. As a result of their unlawful acts, Defendants have reaped and continue to reap
3 unfair benefits and unlawful profits at the expense of Plaintiff, and the Classes they seek to
4 represent. Defendants should be enjoined from this activity and made to disgorge these ill-gotten
5 gains and restore to Plaintiff and the members of the Plaintiff Class the wrongfully withheld wages
6 pursuant to Business and Professions Code § 17203. Plaintiff is informed and believe, and thereon
7 allege, that Defendants are unjustly enriched through their requiring employees to suffer
8 Defendants' failure to pay legal wages, and/or other compensation for untimely and/or incomplete
9 meal periods, and compensation for unprovided, untimely, and/or unpaid rest periods to Plaintiff
10 and members of the Plaintiff Class. Plaintiff is informed and believe, and thereon allege, that
11 Plaintiff and members of the Plaintiff Class are prejudiced by Defendants' unfair trade practices.

12 82. As a direct and proximate result of the unfair business practices of Defendants, and
13 each of them, Plaintiff, individually and on behalf of all employees similarly situated, are entitled
14 to equitable and injunctive relief, including full restitution and/or disgorgement of all wages which
15 have been unlawfully withheld from Plaintiff and Class Members as a result of the business acts
16 and practices described herein and enjoining Defendants to cease and desist from engaging in the
17 practices described herein.

18 83. The unlawful conduct alleged herein is continuing, and there is no indication that
19 Defendants will not continue such activity into the future. Plaintiff allege that if Defendants are
20 not enjoined from the conduct set forth in this Complaint, they will continue to unlawfully require
21 Defendants' non-exempt employees to work "off the clock" without compensation, will continue
22 to require non-exempt employees to work during meal periods, will continue to fail to provide
23 proper paid rest periods or provide appropriate compensation in lieu thereof, and will continue to
24 fail to pay and to avoid paying appropriate taxes, insurance, and unemployment withholdings.

25 84. Plaintiff further request that the Court issue a preliminary and permanent injunction
26 prohibiting Defendants from requiring Plaintiff and the Classes they seek to represent to work "off
27 the clock" without compensation, prohibiting other wrongful conduct which is the subject of this
28 Complaint and which may later be discovered in the course of litigation, enjoining Defendants

1 from forbidding employees to leave the workplace during meal periods, and from continuing to fail
2 to provide rest periods and meal periods or provide appropriate compensation in lieu thereof.

3 85. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

4 **SIXTH CLAIM FOR RELIEF**

5 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
6 **(CAL. LABOR CODE §§2698 ET SEQ.)**

7 **(PLAINTIFF AGAINST ALL DEFENDANTS)**

8 86. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

9 87. Plaintiff brings this claim for themselves and other current and former employees,
10 as expressly authorized by the California Private Attorneys General Act of 2004, Labor Code
11 §§ 2699 *et seq.* ("PAGA"). PAGA is an enforcement action that empowers an aggrieved employee
12 to seek penalties on behalf of himself, current and former employees and the State, without the
13 need to certify a class. For purposes of this claim only, therefore, Plaintiff brings this claim for
14 himself and other current and former employees and need not comply with Class Action
15 Certification.

16 88. Plaintiff is an aggrieved employee as defined in Labor Code §2699(a). He brings
17 this cause on behalf of themselves and other current or former aggrieved employees affected by the
18 labor law violations alleged in this Complaint.

19 89. Plaintiff seeks civil penalties as provided under applicable Labor Code sections for
20 violations of the Labor Code alleged herein pursuant to Labor Code § 2699(a). To the extent that
21 any violation alleged herein does not carry a penalty, Plaintiff seeks civil penalties pursuant to
22 Labor Code § 2699(f) for Plaintiff, other current or former employees and the State for each pay
23 period in which he or she was aggrieved, in the amounts established by Labor Code § 2699.

24 90. Labor Code § 2699(f) provides:

25 For all provisions of this code except those for which a civil penalty is
26 specifically provided, there is established a civil penalty for a violation of
27 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
28 the person employs one or more employees, the civil penalty is one hundred
dollars (\$100) for each aggrieved employee per pay period for the initial
violation and two hundred dollars (\$200) for each aggrieved employee per
pay period for each subsequent violation.

1 91. Plaintiff seeks civil penalties due from all Defendants on behalf of themselves, other
2 aggrieved employees and the State, as provided by Labor Code § 2699(i), including but not limited
3 to, penalties and unpaid wages due pursuant to Labor Code § 558 and § 1197.1 as a result of
4 DEFENDANTS' violation of the provisions of the Labor Code and the applicable Wage Order.

5 92. Defendants are liable as employers or persons acting on behalf of the employer(s)
6 pursuant to Labor Code § 558. Each Defendant, including PAGA Defendants, created, authorized,
7 implemented and/or enforced the practices that violate the law and/or caused the violations
8 complained of herein. Defendants are therefore liable for penalties and wages pursuant to Labor
9 Code § 558.

10 93. All Defendants are liable to Plaintiff and "other current or former employees and
11 the state" for the civil penalties arising from the violations alleged in this Complaint. Plaintiffs are
12 also entitled to an award of attorneys' fees and costs as set forth below.

13 94. Most of the predicate act violations which serve as the basis for this PAGA claim
14 (minimum wage and overtime violations, rest and meal period violations, reporting time violations,
15 and failure to compensate for all "hours worked") relate to the non-payment of wages or violations
16 of the IWC Wage Orders that were posted at the worksite. As such, these claims also constitute
17 predicate violations of the payment of wages when due.

18 95. Plaintiff is aggrieved by Defendants labor and payroll practices that:

- 19 a. fail to compensate for all "hours worked";
20 b. fail to compensate minimum and premium wages;
21 c. fail to provide timely and/or complete meal breaks, or premium wages in lieu
22 thereof;
23 d. fail to provide timely and/or complete rest breaks, and/or paid rest breaks, or
24 premium wages in lieu thereof;
25 e. fail to provide accurate wage statements or to maintain accurate time and payroll
26 records;
27 f. fail to pay all wages due at termination or promptly following resignation;

28 96. Plaintiff, on behalf of himself and similarly situated employees and former

1 employees of Defendants, request relief as described below.

2 97. WHEREFORE, Plaintiff and the Class they seek to represent request relief as
3 described herein and below.

4
5 **VII. PRAYER**

6 WHEREFORE, Plaintiff and the Class pray for judgment as follows:

7 1. That the Court determine that this action may be maintained as a class action or
8 actions;

9 2. For compensatory damages including wages in an amount according to proof with
10 interest thereon;

11 3. For economic and/or special damages in an amount according to proof with interest
12 thereon;

13 4. For a declaratory judgment that each of the Defendants violated the Plaintiff's and
14 Class Members' rights under the California Labor Code, and applicable IWC Wage Orders as set
15 forth in the preceding paragraphs;

16 5. Award each Plaintiff and proposed Class Member statutory damages;

17 6. That each of the Defendants be found to have engaged in unfair competition in
18 violation of California Business and Professions Code § 17200 *et seq.*;

19 7. That each of the Defendants be ordered and enjoined to make restitution to the Class
20 due to their unfair competition, including disgorgement of their wrongfully-obtained revenues,
21 earnings, profits, compensation, and benefits, pursuant to California Business and Professions
22 Code §§ 17203 and 17204;

23 8. That each of the Defendants be enjoined from continuing the unlawful or unfair
24 competition in violation of § 17200 as alleged herein;

25 9. For declaratory relief for Defendants' violation of the California Labor Code and
26 California Business and Professions Code;

27 10. That Defendants be enjoined from further acts of restraint of trade or unfair
28 competition;

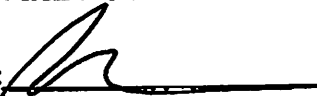
11. For premium wages pursuant to Labor Code §§ 226, 226.7 and 510;
12. For unpaid wages pursuant to California Labor Code § 1194 and liquidated damages pursuant to Labor Code § 1194.2;
13. For an order imposing all statutory and/or civil penalties provided by law, including but not limited to, penalties under Labor Code §§ 203, 210, 225.5, 226, 226.3, 226.7, 256, 512, 558, 1174.5, 1194, 1194.2, 1197.1, 2802, 2699(a) and 2699(f) relating to all facts alleged in the complaint;
14. An award to Plaintiff and the Class Members of reasonable attorneys' fees, costs, and interest thereon pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 218.5, 218.6, 226, 1194, 2699(g), and/or other applicable law; and
15. For penalties and all available relief available under the PAGA statute, Cal. Labor Code §§ 2698 *et seq.*;
16. For costs of suit and attorneys fees pursuant to PAGA;
17. For penalties and all available relief under Labor Code § 558;
18. For actual, incidental, and consequential damages for breach of contract;
19. For such other and further relief as the Court deems just and proper.
20. Injunctive relief;
21. Interest pursuant to California Labor Code § 218.6

VIII. DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of their claims by jury to the extent authorized by law.

Dated: September 30, 2015

MALLISON & MARTINEZ

By: 

Stan S. Mallison
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