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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF STANISLAUS

NICOLE PRIOLA, an individual,

Plaintiff,

vs.

**COPPER AND GOLD, LLC., a limited liability
corporation, PENNY NEWMAN GRAIN CO.,
a corporation, and DOES 1-10, inclusive,**

Defendants.

Case No.: CV-22-005730

COMPLAINT FOR DAMAGES FOR:

- 1. DISABILITY DISCRIMINATION**
- 2. FAILURE TO ACCOMMODATE**
- 3. FAILURE TO ENGAGE IN THE
INTERACTIVE PROCESS**
- 4. RETALIATION FOR REQUESTING
ACCOMMODATION**
- 5. FAILURE TO PREVENT
DISCRIMINATION AND RETALIATION**
- 6. FAILURE TO FURNISH MEAL
PERIODS**
- 7. FAILURE TO PAY OVERTIME**
- 8. FAILURE TO PAY MINIMUM WAGE**
- 9. FAILURE TO PAY ALL WAGES AT
TERMINATION**
- 10. FAILURE TO FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS**
- 11. LABOR CODE PRIVATE ATTORNEY
GENERAL ACT VIOLATIONS**

JURY TRIAL DEMANDED

Plaintiff Nicole Priola brings this action against Defendants Copper And Gold, LLC, Penny
Newman Grain Co., and Does 1-10 for violations of the California Fair Employment and Housing Act
and the California Labor Code.

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PARTIES

1. Nicole Priola (“Priola” or “Plaintiff”) is and was at all times relevant herein an individual and was an employee as defined by the Fair Employment and Housing Act (“FEHA”) and the California Labor Code.

2. Copper And Gold, LLC (“Copper and Gold”) is and was at all times relevant herein a limited liability corporation doing business in California, and was an employer as defined by the FEHA and the California Labor Code.

3. Penny Newman Grain Co. (“Penny Newman”) is and was at all times relevant herein a limited liability corporation doing business in California, and was an employer as defined by the FEHA and the California Labor Code.

4. Copper and Gold, Penny Newman, and Does 1-10 are collectively referred to herein as Defendants.

5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 10, whether individual, corporate, associate, or otherwise and therefore sue such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff’s injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

6. Plaintiff is informed and believe and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and

1 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
2 the remaining Defendants.

3 **VENUE AND JURY TRIAL DEMAND**

4 7. Venue is proper in this Court because unlawful acts as to Plaintiff alleged herein took
5 place in Stanislaus County. Plaintiff hereby demands a jury trial.

6 **GENERAL ALLEGATIONS**

7 8. Plaintiff was jointly employed by Penny Newman and Copper and Gold as a
8 Weighmaster from September 23, 2021, until her unlawful termination on August 24, 2022.
9 Throughout Plaintiff's employment, she worked in Defendants' Modesto facility.

10 9. Penny Newman and Copper and Gold were joint employers of all employees at each of
11 Copper and Gold's locations in California. While Copper and Gold provided its name as the legal
12 entity that employed Plaintiff on wage statements furnished to Plaintiff, Penny Newman exercised
13 significant control over the day-to-day activities of Plaintiff's and other Copper and Gold employees'
14 employment.

15 10. As examples, it was a Penny Newman employee using a Penny Newman email address
16 for official communications who made the decision to terminate Plaintiff's employment and was
17 substantially involved in the decision to hire Plaintiff in the first instance. Penny Newman regularly
18 directed Copper and Gold employees to perform work at Penny Newman facilities and for Penny
19 Newman's direct benefit during the period of Plaintiff's employment. Penny Newman and Coper and
20 Gold, LLC share an identical physical address as their principal place of business, specifically 2691 S.
21 Cedar Ave., Fresno, California 93776.

22 11. During Plaintiff's employment, Plaintiff suffered from a physical condition, specifically
23 a seizure disorder, that was known to Defendants and that interfered with Plaintiff's major life
24 functions, including working.

25 12. Despite her disability, Plaintiff was able to perform the essential functions of her job
26 with or without reasonable accommodation, including the accommodation of medically necessary
27 leave.

1 13. Indeed, Plaintiff performed well throughout her employment with Defendant and never
2 received any reprimands or other forms of discipline, nor was she informed at any time that her work
3 performance was not acceptable to Defendants.

4 14. During Plaintiff's employment with Defendants, her direct supervisor was Dave Prater
5 ("Prater").

6 15. On or about July 29, 2022, Plaintiff began to suffer from symptoms of her disability.
7 She initially believed that she may have been suffering from the flu, was nauseous, and was running a
8 fever. She texted Prater that she had been throwing up and had a fever. On July 31, 2022, Plaintiff
9 texted Prater that she believed she had the flu and would not be able to make it to work. She informed
10 Prater that she had spent the night in the emergency room.

11 16. On August 1, 2022, Plaintiff informed Prater via text that her fever had returned and that
12 she had a doctor's appointment the next day. On August 2, 2022, a Tuesday, Plaintiff informed Prater
13 that she had been put off work until the following Tuesday by her doctor and that her illness "has now
14 caused problems with the nerves in my face."

15 17. At 4:20 p.m. on August 2, 2022, Plaintiff texted to Prater, "I'm being treated with all
16 kinds of meds and labs done and have to have an MRI. It really sucks being this sick. I almost look
17 like I had a small stroke in the right side of my face." Plaintiff also texted Prater a copy of a medical
18 note placing her off work through August 9, 2022.

19 18. At 9:14 am on August 8, 2022, Plaintiff texted to Prater, "I'm just cutting it as a loss. I
20 meet with a neurologist tomorrow so I'll know more tomorrow afternoon. I have now had 3 trips to the
21 ER. The last 2 were lights and sirens. I have so many bruises from being stabbed a million times with
22 needles. I have had so much done to try and figure out what is going on. I'm terrified to drive and
23 come to work in case this happens while there or driving."

24 19. Plaintiff told Prater that she wanted to speak to Marjorie Bynion ("Bynion"),
25 Defendants' Human Resources Director, to inform her of her medical condition and work status. Prater
26 provided Plaintiff with Bynion's telephone number.

27 20. On August 9, 2022, Plaintiff informed Prater by text message that she had a doctor's
28 appointment that afternoon. Plaintiff also told Prater:

7:59 AM

Me: I am hoping. My appointment today is with a neurologist. When this happens my face goes into convulsions, goes numb, droops like a stroke and when I try to talk I studder very badly

21. On August 15, 2022, Plaintiff texted to Prater, "I wanted to touch bases and let you know I am working with my dr about coming back sooner."

22. On August 22, 2022, Plaintiff engaged in the following text exchange with Prater:

Aug 22, 2022

Me: I have another note for you. My dr now has me off until the 12th due to having 6 seizures all in one night Saturday night.

1:08 PM

Dave boss: Ok

23. Throughout this time, Plaintiff made several calls to Bynion to discuss her disability and work status, but Bynion never responded.

24. On August 23, 2022, Prater texted Plaintiff and asked that she send him an updated note, to which Plaintiff responded that she had a doctor's appointment soon and would drop the note off subsequent to that appointment, which Plaintiff did.

25. The next day, Plaintiff texted to Prater, "If you talk to Marjorie could you please let her know I have been trying to reach her for 2 days now," to which Prater responded, "Yes I will let her know." Unbeknownst to Plaintiff at this time, Defendants had now made the decision to unlawfully terminate Plaintiff's employment because of her disability and need for medical leave.

26. On August 25, 2022, still unaware that she had been terminated, Plaintiff had the following text exchange with Prater:

Aug 25, 2022

Me: Is there any way of getting her email address? I have questions and I have left tons of messages & get nothing

8:07 AM

Dave boss: mbynion@penny-newman.com

12:50 PM

Me: Thank you. As of right now I will be back 5:45 am on the 12th for my shift. I'm looking forward to coming back. I miss being there and I miss everyone as well.

Me: I have been trying all week to reach Marjorie leaving voice messages and I don't hear anything from her. I have a couple important things to talk to her about. If you happen to talk to her could you please let her know I been trying to reach her all week.

1:47 PM

Me: Im also trying to reach her because I need to change my direct deposit information before I come back

2:20 PM

Me: When you get a chance could you please call me?

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2
3 27. Plaintiff also emailed Bynion that day, again requesting to speak with her regarding her
4 work status:

5
6 **Nicole Priola** [REDACTED]
To: MBynion@penny-newman.com

Thu, Aug 25, 2022 at 8:48 AM

7 Good morning

8 I have been trying to get a hold of you for 3 days now. I have an update for you and some questions. Last we
talked you were going to look into some options for me and I never heard back from you. Please call me at
your earliest convenience 209-638-2133

9 Thank you
Nicole Priola

10
11 28. The next day, Plaintiff received a letter from Defendants, dated August 24, 2022, and
12 signed by Bynion, stating:

13 Re: Employment Status

14 Dear Nicole:

15 As you know, you have been out on a personal leave of absence since July 30, 2022. The
16 Company provided you with an extension through August 23, 2022 in the hopes that you would
be able to return to your position.

17 Based on the last communication we received from you on August 23, you now have an
18 estimated return date of September 11, 2022. Your continued absence has created an undue
hardship on other employees and has adversely affected the operations of Copper And Gold.
19 The Company cannot continue to hold your position open and therefore we have to end your
employment and find a replacement. When you feel you are ready to return to work, please feel
20 free to give us a call and we would be happy to discuss any positions that we might have
available at that time with you.

21 Sincerely,

22
23 

24 Marjorie C. Bynion
25 Human Resources Manager
26
27
28

1 29. Defendants falsely stated that Plaintiff had been on a “personal leave of absence” even
2 though Defendants were clearly aware that Plaintiff had a disability and required medical leave as a
3 reasonable accommodation for her disability.

4 30. Providing Plaintiff reasonable accommodation in the form of medical leave did not
5 result in undue hardship to Defendants, who had and continue to have more than sufficient resources to
6 cover her position and furnish her with said leave.

7 31. Accordingly, Defendants unlawfully terminated Plaintiff’s employment because of her
8 disability, failed to reasonably accommodate Plaintiff’s disability, failed to engage in the interactive
9 process, and retaliated against Plaintiff for requesting leave as a reasonable accommodation for her
10 disability.

11 32. In addition to the above violations, Defendants also committed several violations of the
12 Labor Code against Plaintiff and other non-exempt employees, including failing to furnish meal breaks,
13 failing to pay overtime, failing to furnish accurate itemized wage statements, and failing to pay all
14 wages due at termination.

15 33. Due to understaffing, Plaintiff and other non-exempt employees of Defendants were
16 required to work through meal periods while being instructed to clock out. With respect to Plaintiff,
17 this occurred on several occasions, and Plaintiff is informed and believes that other non-exempt
18 employees of Defendant were similarly required to work through meal periods while being instructed
19 by their supervisors to clock out so as to make it appear a compliant meal period was provided. On
20 these occasions, Plaintiff and other non-exempt employees were not paid at all for this work time,
21 which was time worked in excess of eight hours on those days and which should have been paid as
22 overtime. Accordingly, Plaintiff and other non-exempt employees were not paid minimum wage for all
23 hours worked nor did they receive all overtime pay to which they were entitled.

24 34. Though Plaintiff was not afforded legally compliant meal breaks, Defendants also did
25 not pay her any premium wages for its failure to furnish meal breaks, in violation of Labor Code
26 section 226.7.

27 35. Plaintiff and other non-exempt employees of Defendants were also entitled to, and
28 received, non-discretionary bonuses during the course of their employment, which sums were indicated

1 on their wage statements with the line item “Bonus.” However, Defendants failed to incorporate these
2 bonuses into Plaintiff’s and other non-exempt employees’ regular rates of pay for purposes of overtime
3 pay.

4 36. When Plaintiff’s employment was unlawfully terminated, Defendants willfully and
5 intentionally did not pay, and still have not paid, the unpaid meal period wages, minimum wage, and
6 overtime wages that were due to Plaintiff.

7 37. Plaintiff was entitled to receive wage statements from Defendants that accurately stated,
8 among other things, her total hours worked, all applicable rates of pay and the number of hours worked
9 at each rate, and the gross and net wages that she earned. However, as a result of the above violations
10 Defendants did not furnish her with wage statements that accurately stated her total hours worked,
11 gross wages earned, net wages earned, or all applicable rates of pay and the number of hours worked at
12 each rate.

13 38. Plaintiff suffered injury as a result of receiving these inaccurate wage statements as she
14 could not promptly and easily determine from the wage statements alone, *inter alia*, her actual total
15 hours worked or all applicable rates of pay and the number of hours worked at each rate.

16 39. On September 9, 2022, Plaintiff filed a complaint with the Department of Fair
17 Employment and Housing against Defendants, alleging that Defendants discriminated against, failed to
18 accommodate, failed to engage in the interactive process with, retaliated against, and failed to prevent
19 discrimination and retaliation against Plaintiff in violation of the FEHA. A right to sue notice was
20 issued to Plaintiff the same day, a copy of which was served on Defendants by certified mail on
21 September 9, 2022.

22 40. On October 6, 2022, Plaintiff through her counsel of record filed a notice with the
23 California Labor and Workforce Development Agency via online portal (“PAGA Notice”) setting forth
24 the violations of the Labor Code alleged to have been committed by Defendants against their
25 employees and the facts and theories to support the alleged violations. A true and correct copy of
26 Plaintiff’s PAGA Notice is attached to this complaint as **Exhibit 1** and incorporated by this reference.
27 Plaintiff, through her counsel of record, sent a copy of her PAGA Notice to Defendants by certified
28 mail on the same day.

41. As of the filing of this complaint, which is more than 65 calendar days since Plaintiff filed her PAGA Notice with the LWDA and sent copies of the PAGA Notice to Defendants by certified mail, the LWDA has not given notice that it intends to investigate the alleged violations set forth therein. Accordingly, Plaintiff has standing as an aggrieved employee to pursue claims for civil penalties under PAGA against Defendants for the violations set forth in her PAGA Notice.

FIRST CAUSE OF ACTION
VIOLATION OF GOVERNMENT CODE SECTION 12940(a)
(Disability Discrimination)
Against Defendants

42. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

43. The Fair Employment and Housing Act (“FEHA”) explicitly prohibits an employer from refusing to hire or employ a person, discharging a person from employment, or discriminating against such person in compensation or in terms, conditions or privileges of employment on the basis of physical disability or medical condition. Gov. Code § 12940(a).

44. Defendants were at all times material herein Plaintiff's employer pursuant to Gov. Code § 12926(d) and were therefore barred from discriminating against their employees based on disability and/or perceived disability.

45. Nevertheless, as set forth above, Defendants discriminated against Plaintiff based on disability, perceived disability, and/or future perceived disability, in violation of Gov. Code § 12940(a).

46. The acts taken toward Plaintiff were carried out by Defendants acting in an oppressive, fraudulent and malicious manner in order to injure or damage Plaintiff, thereby justifying an award to her of punitive damages.

47. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed and requests relief as hereafter provided.

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56. Defendants at all times material herein were Plaintiff's employer pursuant to Gov. Code § 12926(d), had knowledge of her disability and were required to engage in the interactive process pursuant to Gov. Code § 12940(n).

57. Nevertheless, as set forth above, Defendants failed to engage in a timely, good faith interactive process with Plaintiff.

58. The acts taken toward Plaintiff were carried out by Defendants acting in an oppressive, fraudulent and malicious manner in order to injure or damage Plaintiff, thereby justifying an award to her of punitive damages.

59. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed and requests relief as hereafter provided.

FOURTH CAUSE OF ACTION
VIOLATION OF GOVERNMENT CODE SECTION 12940(m)(2)
(Retaliation)
Against All Defendants

60. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

61. The FEHA expressly prohibits an employer from retaliating or otherwise discriminating against a person for requesting reasonable accommodation, whether or not the request was granted. Gov't Code §12940(m)(2).

62. At all times relevant herein, Defendants were Plaintiff's employer and were prohibited from retaliating against Plaintiff.

63. Nonetheless, as set forth above, Defendants retaliated against Plaintiff for requesting reasonable accommodation.

64. The acts taken toward Plaintiff were carried out by Defendants acting in an oppressive, fraudulent and malicious manner in order to injure or damage Plaintiff, thereby justifying an award to her of punitive damages.

65. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed and requests relief as hereafter provided.

FIFTH CAUSE OF ACTION
VIOLATION OF GOVERNMENT CODE SECTION 12940(k)
(Failure to Prevent Discrimination and Retaliation)
Against All Defendants

66. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

67. The FEHA requires an employer to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation from occurring. Gov. Code § 12940(k).

68. Defendants at all times relevant herein were Plaintiff's employer pursuant to Government Code section 12926(d) and were therefore required to prevent discrimination and retaliation pursuant to Government Code section 12940(k).

69. Defendants knew or should have known of the harassment and retaliation but did nothing to prevent it. Instead, Defendants encouraged, permitted and/or acquiesced to the harassment, and retaliation. Consequently, Defendants failed to take all reasonable steps to prevent the discrimination from occurring in violation of Government Code section 12940(k).

70. The acts taken toward Plaintiff were carried out by Defendants acting in an oppressive, fraudulent and malicious manner in order to injure or damage Plaintiff, thereby justifying an award to her of punitive damages.

71. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed and requests relief as hereafter provided.

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTIONS 226.7 & 512
Failure to Furnish Meal Periods
Against All Defendants

72. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

73. Labor Code § 512 provides that an employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less

1 than 30 minutes, except that if the total work period per day of the employee is no more than six hours,
2 the meal period may be waived by mutual consent of both the employer and employee. An employer
3 shall not employ an employee for a work period of more than 10 hours per day without providing the
4 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is
5 no more than 12 hours, the second meal period may be waived by mutual consent of the employer and
6 the employee only if the first meal period was not waived.

7 74. As set forth above, during the relevant time period, Defendants did not authorize and
8 permit Plaintiff to take meal periods.

9 75. Plaintiff did not voluntarily waive her right to take any meal periods.

10 76. Plaintiff was also not paid any premium wages for missed meal periods as required by
11 Labor Code section 226.7.

12 77. Pursuant to Labor Code section 558.1, Defendants Gamez and Valenzuela were officers
13 of AA Sign and caused the violation of Labor Code section 226.7 suffered by Plaintiff.

14 78. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
15 provided.

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17 **SEVENTH CAUSE OF ACTION**
18 **VIOLATION OF LABOR CODE SECTIONS 510 & 1198**
19 **(Failure to Pay Overtime)**
Against All Defendants

20 79. Plaintiff hereby realleges and incorporates by reference each and every allegation
21 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
22 allegations of this cause of action.

23 80. Pursuant to California Labor Code section 510, any work in excess of eight hours in one
24 workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on
25 the seventh day of work in any one workweek shall be compensated at the rate of no less than one and
26 one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day
27 shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In
28

1 addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at
2 the rate of no less than twice the regular rate of pay of an employee.

3 81. Pursuant to California Labor Code section 1198, the maximum hours of work and
4 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
5 standard conditions of labor for employees and the employment of any employee for longer hours than
6 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

7 82. During the relevant time period, Plaintiff regularly worked overtime.

8 83. During the relevant time period, Defendants intentionally and willfully failed to pay the
9 proper overtime wages due to Plaintiff.

10 84. Wherefore, Plaintiff has been injured as set forth above and request relief as hereafter
11 provided.

12 **EIGHTH CAUSE OF ACTION**
13 **VIOLATION OF LABOR CODE SECTIONS 1194, 1194.2, 1197**
14 **(Failure to Pay Minimum Wage)**
15 **Against All Defendants**

16 85. Plaintiff hereby realleges and incorporates by reference each and every allegation
17 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
18 allegations of this cause of action.

19 86. California Labor Code section 1182.12 establishes the minimum wage for California
20 employees from July 1, 2014, to present.

21 87. Labor Code Section 1194 provides, in relevant part:

22 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
23 than the legal minimum wage ... applicable to the employee is entitled to recover in a
24 civil action the unpaid balance of the full amount of this minimum wage ... including
25 interest thereon, reasonable attorney's fees, and costs of suit.

26 88. Labor Code section 1194.2 provides, in relevant part:

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

1 89. Labor Code section 1197 provides that the minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a lesser wage is
3 unlawful

4 90. Pursuant to California Labor Code section 1198, the maximum hours of work and
5 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
6 standard conditions of labor for employees and the employment of any employee for longer hours than
7 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

8 91. During the relevant time period, Defendants intentionally and willfully failed to pay
9 Plaintiff at least minimum wage for every hour worked.

10 92. Wherefore, Plaintiff has been injured as set forth above and request relief as hereafter
11 provided.

12 **NINTH CAUSE OF ACTION**
13 **VIOLATION OF LABOR CODE SECTIONS 201, *ET SEQ.***
14 **(Failure to Pay All Wages at Termination/Resignation)**
 Against All Defendants

15 93. Plaintiff hereby realleges and incorporates by reference each and every allegation
16 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
17 allegations of this cause of action.

18 94. California Labor Code section 201 provides that if an employer discharges an employee,
19 the wages earned and unpaid at the time of discharge are due and payable immediately.

20 95. California Labor Code section 202 requires an employer to pay an employee all earned
21 wages within 72 hours of the employee quitting his or her employment, or immediately at the time of
22 quitting if the employee has given 72 hours previous notice of his or her intention to quit.

23 96. Pursuant to Labor Code section 203, an employer must pay “waiting time” penalties
24 equal to one days’ pay for each day all wages earned but unpaid are not paid to the employee, up to a
25 maximum of 30 days.

26 97. As set forth above, Plaintiff was not timely paid all wages due and owing to her when
27 her employment ended.

1 98. Wherefore, Plaintiff has been injured as set forth above and request relief as hereafter
2 provided.

3 **TENTH CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE SECTION 226**
5 **(Failure to Furnish Accurate Itemized Wage Statements)**
6 **Against All Defendants**

7 99. Plaintiff hereby realleges and incorporates by reference each and every allegation set
8 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 100. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly
11 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
12 part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are
13 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
14 earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and
15 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net
16 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
17 employee and only the last four digits of his or her social security number or an employee
18 identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all
19 applicable hourly rates in effect during the pay period and corresponding number of hours worked at
20 each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate
21 of pay and the total hours worked for each temporary services assignment.”

22 101. An employee suffering injury as a result of the knowing and intentional failure by an
23 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
24 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
25 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the
26 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
27 reasonable attorney’s fees. Labor Code § 226(e)(1).

28 102. An employee is deemed to suffer injury if the employer fails to provide a wage
statement or if the employer fails to provide accurate and complete information as required by any

one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee during the pay period or any of the other information required to be provided pursuant to Labor Code section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name and address of the employer and iv) the name of the employee and the last four digits of his or her social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv). “Promptly and easily determine” means a reasonable person would be able to readily ascertain the information without reference to other documents or information. Labor Code § 226(e)(2)(C).

103. As set forth above, Defendants intentionally and willfully failed to furnish accurate itemized wage statements which complied with Labor Code section 226 to Plaintiff.

104. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

ELEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 2699 *et seq.*
(Labor Code Private Attorney General Act Violations)
Against All Defendants

105. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

106. The Private Attorneys General Act (“PAGA”), as set forth at California Labor Code § 2698 *et seq.*, is and at all times relevant herein was applicable to Plaintiff’s employment by Defendants.

107. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code § 2699(a).

1 108. Pursuant to PAGA, an “aggrieved employee” is “any person who was employed by the
2 alleged violator and against whom one or more of the alleged violations was committed.” Labor
3 Code § 2699(c).

4 109. Plaintiff Ortega was employed by Defendants and the alleged violations were
5 committed against her during her time of employment and have continued thereafter. Plaintiff Ortega
6 is therefore an aggrieved employee as defined by Labor Code § 2699(c). Other current and former
7 employees are also aggrieved employees in that one or more of the alleged violations were committed
8 against them during their time of employment with Defendants.

9 110. Defendants violated the Labor Code as to Plaintiff and other current and former
10 employees as set forth in Exhibit 1.

11 111. Pursuant to California Labor Code § 2699(g), an aggrieved employee may recover the
12 civil penalty on behalf of himself or herself and other current or former employees against whom one
13 or more of the alleged violations was committed. Furthermore, any employee who prevails in any
14 action shall be entitled to an award of reasonable attorney's fees and costs.

15 112. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Plaintiff, may
16 pursue a civil action arising under PAGA after the following requirements have been met:

17 a. The aggrieved employee shall give written notice by online filing to the LWDA
18 and by certified mail to the employer (hereinafter “Employee’s Notice”) of the specific
19 provisions of California Labor Code alleged to have been violated, including the facts and
20 theories to support the alleged violations;

21 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the employer
22 and the aggrieved employee by certified mail that it does not intend to investigate the alleged
23 violation within 60 days of the postmark date of the Employee’s Notice. Upon receipt of the
24 LWDA’s Notice, or if the LWDA does not provide notice within 65 calendar days of the
25 postmark date of the Employee’s Notice, the aggrieved employee may commence a civil
26 action pursuant to California Labor Code § 2699 to recover civil penalties in addition to any
27 other penalties to which the employee may be entitled.

1 c. For all alleged violations not enumerated in Labor Code § 2699.5, the employer is
2 given thirty-three (33) days to cure and notify the aggrieved employee by certified mail that
3 the violation has been cured. If the violation is not cured, the aggrieved employee may
4 commence a civil action pursuant to California Labor Code § 2699 to recover civil penalties in
5 addition to any other penalties to which the employee may be entitled.

6 113. On September 6, 2022, Plaintiff Ortega provided written notice by certified mail to
7 Defendants and by online filing to the LWDA of the specific provisions of the Labor Code alleged to
8 have been violated, including the facts and theories to support the alleged violations. Exhibit 1.

9 114. As of the filing of this complaint, which is more than 65 calendar days since Plaintiff filed
10 her PAGA Notice with the LWDA and sent copies of the PAGA Notice to Defendants by certified mail,
11 the LWDA has not given notice that it intends to investigate the alleged violations set forth therein.
12 Accordingly, Plaintiff has standing as an aggrieved employee to pursue claims for civil penalties under
13 PAGA against Defendants for the violations set forth in her PAGA Notice.

14 115. Wherefore, Plaintiff seeks civil penalties, fees and costs, as set forth below.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

- 17 1. That this Court award actual, compensatory, special, and general damages,
18 including unpaid wages and premium wages for missed meal periods, in an amount
19 yet unknown, but in excess of the minimum jurisdictional limit of this Court;
- 20 2. That this Court award punitive and/or exemplary damages;
- 21 3. That this Court issue injunctive relief requiring Defendants to comply with Labor
22 Code section 226 and the FEHA;
- 23 4. That this Court award statutory attorneys' fees and costs, including those available
24 under Government Code section 12965(b) and Labor Code sections 218.5, 226(h),
25 1194.2, and 2699(g);
- 26 5. That this Court award liquidated damages pursuant to Labor Code section 1194.2;
- 27 6. That this Court award statutory penalties, including those pursuant to Labor Code
28 sections 203 and 226(e);

Exhibit 1

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.....
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OF COUNSEL
J. ANTHONY ABBOTT

October 6, 2022

SENT VIA ONLINE FILING (<https://dir.tfaforms.net/308>)

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

Copper And Gold, LLC
2691 S. Cedar Ave.
Fresno, CA 93725

Penny Newman Grain Co.
2691 S. Cedar Ave.
Fresno, CA 93725

Re: Nicole Priola

To Whom It May Concern:

This firm represents Nicole Priola ("Priola") in relation to her prior joint employment with Copper and Gold, LLC and Penny Newman Grain Co. ("Employers") in California. Employers utilized shared physical facilities, including their corporate address; shared personnel, including human resources personnel making the decision to terminate Priola's employment and personnel used to perform tasks related to each other's businesses; shared a common management structure; and both exercised sufficient control over the wages, hours, and working conditions of Priola's and other non-exempt employees' employment so as to be Ms. Priola's joint employers under California law.

In accordance with California Labor Code section 2699.3, this letter shall serve as Ms. Priola's written notice to the Labor and Workforce Development Agency ("LWDA") and Employers regarding the following violations, and facts and theories supporting the violations, on Ms. Priola's behalf and, as a proxy for the LWDA, on behalf of current and other former California employees of Employer.

During the prior year and beyond, Employers have failed to do all of the following with respect to Ms. Priola and its other current and former non-exempt employees in violation of the California Labor Code:

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Penny Newman Grain Co.
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1. Pay overtime at Ms. Priola's and other current and former non-exempt employee's regular rates of pay in violation of Labor Code section 510. Ms. Priola and other current and former employees of Employers were entitled to, and received, non-discretionary bonuses, commissions, and other items of compensation. However, these non-discretionary bonuses, commissions, and other items of compensation were not factored into the regular rate of pay of Employers' non-exempt employees for purposes of overtime compensation, in violation of Labor Code section 510.
 - a. For example, Ms. Priola and Employers' other non-exempt employees were eligible to earn, non-discretionary bonuses over the course of their employment, indicated on their wage statements by the line item "Bonus." However, these bonuses were not incorporated into Ms. Priola's overtime pay.
 - b. Due to understaffing, Ms. Priola was required work through meal periods, but was instructed by Employers that she needed to clock out despite being required to continue working. This occurred with respect to Ms. Priola on several occasions; however, Employers did not pay her for that time worked. Ms. Priola is informed and believes that other non-exempt employees, were similarly not furnished with legally required meal periods during their employment with Employers and not paid for their working time during those meal periods. Because Ms. Priola and other non-exempt employees of Employers were required to work through meal periods without pay, and regularly worked in excess of eight hours per day on those days, Ms. Priola and other non-exempt employees of Employers were not paid all overtime wages they were owed.
2. Pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1197.
 - a. Due to understaffing, Ms. Priola was required work through meal periods, but was instructed by Employers that she needed to clock out despite being required to continue working. This occurred with respect to Ms. Priola on several occasions; however, Employers did not pay her for that time worked. Ms. Priola is informed and believes that other non-exempt employees were similarly not furnished with legally required meal periods during their employment with Employers and not paid for their working time during those

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meal periods. Accordingly, Ms. Priola and other non-exempt employees of Employers were not paid minimum wage for all hours worked.

3. Furnish all legally required meal periods in violation of Labor Code § 512.
 - a. Labor Code § 512 provides that an employee is entitled to a 30-minute, uninterrupted meal period prior to the beginning of their sixth hour of work, and a second 30-minute, uninterrupted meal period prior to the beginning of their eleventh hour of work. However, as set forth above, Employers required Ms. Priola and other non-exempt employees to work through meal periods, while requiring them to clock out despite still working.
4. Timely pay wages in violation of Labor Code § 204.
 - a. Labor Code section 204 requires that all wages earned by any person in any employment are due and payable twice during each calendar month on paydays designated by the employer. Labor Code section 204 also requires an employer to pay employees for overtime work no later than the payday for the next regular payroll period. Because Employers failed to incorporate non-discretionary bonuses into Priola's and its other current and former non-exempt employees' regular rates of pay and required them to work through meal periods without pay, Employers violated the provisions of Labor Code section 204.
5. Pay all wages at termination of employment or within 72 hours of resignation in violation of Labor Code §§ 201 and 202.
 - a. Labor Code section 201 requires that all wages earned but unpaid be paid to an employee upon termination of employment. Labor Code section 202 requires that all wages earned but unpaid be paid to an employee within 72 hours of resignation. Because Employers failed to incorporate non-discretionary bonuses into Ms. Priola's and its other current and former non-exempt employees' regular rates of pay, and thereby underpaid them overtime wages, required them to work through meal periods without pay, and did not pay owed meal period premiums, which have still not been paid to date, Employer violated Labor Code sections 201 and/or 202 as to Ms. Priola and its other former non-exempt employees.

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6. Furnish accurate itemized wage statements in violation of Labor Code § 226(a).
- a. Because Employer failed to properly pay overtime and failed to pay required meal period premiums to Ms. Priola and its other non-exempt employees, the wage statements furnished to Ms. Priola and Employers' other non-exempt employees failed to accurately state the gross and net wages earned and all applicable rates of pay and the corresponding number of hours worked at each rate, in violation of Labor Code sections 226(a)(1), (a)(5), and (a)(9).
 - b. Because Employer failed to pay employees for all time actually worked for the reasons set forth above with respect to Ms. Priola's minimum wage and overtime violation allegations, the wage statements Employers furnished to Ms. Priola and Employers' other non-exempt employees failed to accurately state the total hours worked, gross and net wages earned, and all applicable rates of pay and the corresponding number of hours worked at each rate, in violation of Labor Code sections 226(a)(1), (a)(2), (a)(5), and (a)(9).

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Ms. Priola intends to file a civil complaint against Employers pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees of Employers who were employed in California during the relevant period. Thank you for your attention in this matter.

Regards,

MAYALL HURLEY P.C.

By 
VLADIMIR J. KOZINA

cc: Patrick S. Moody
Barsamian & Moody, APC
1141 West Shaw Ave., Suite 104
Fresno, CA 93711-3704

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