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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By G. Escorcia ,Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

SAUL ROMO, on behalf of others similarly
situated and the State of California under the
Private Attorneys General Act,

Plaintiff,

vs.

PGC FOODS, LLC and DOES 1 through 50,
inclusive,

Defendants.

Case No. 25CU039172C

Hon. Wendy M. Behan
Dept. 66

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Wages Owed
2. Untimely Payment of Wages
3. Waiting Time Penalties
4. Failure to Reimburse Business Expenses
5. Unfair Competition
6. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

Action Filed: July 25, 2025

1 Plaintiff SAUL ROMO, on behalf of all others similarly situated and the State of California
2 under the Private Attorneys General Act (“Plaintiff”) brings this FIRST AMENDED CLASS AND
3 REPRESENTATIVE ACTION COMPLAINT against Defendants PGC FOODS, LLC and DOES 1
4 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a class action filed for wage and hour violations of the California Labor Code.

7 2. Defendant failed to compensate Plaintiff and class members for all hours suffered or
8 permitted to work in violation of the applicable IWC Wage Order.

9 3. Defendant failed to reimburse Plaintiff and class members for their use of their personal
10 cell phones.

11 4. Defendant is further liable for derivative claims for wage statements, untimely
12 payment, and other associated violations.

13 5. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interests,
14 attorney’s fees and costs.

15 **JURISDICTION & VENUE**

16 6. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
17 California Constitution as the causes of action are premised upon violations of California law.

18 7. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
19 the Superior Court.

20 8. This Court has jurisdiction over Defendants because, upon information and belief,
21 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
22 themselves to the California economy so as to render the exercise of jurisdiction over them by the
23 California courts consistent with traditional notions of fair play and substantial justice.

24 9. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
25 and/or 395.5 because, upon information and belief, Defendants conducted business and committed
26 some of the alleged violations in this County.

PARTIES

A. Plaintiff Saul Romo

10. Plaintiff Romo is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about October 2024 to December 2024. Plaintiff worked as a Cashier.

11. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”]). To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal. App. 5th 533 and *Rodriguez v. Packers Sanitation Services Ltd.* (2025) 109 Cal. App. 5th 69, the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

B. Defendants

12. Defendant PGC Foods, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

13. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

14. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

15. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and

are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

16. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

17. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

- a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

18. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

19. The class is ascertainable and shares a well-defined community of interest in this litigation:

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.
- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.

- 1 c. Adequacy: Plaintiff is an adequate class representative; will take all necessary
2 steps to protect the class members' interests adequately and fairly; has no
3 interest antagonistic to other class members; and is represented by attorneys
4 who have substantial experience prosecuting, defending, resolving, and
5 litigating wage and hour class, collective, and representative actions in
6 California state and federal courts.
- 7 d. Superiority: A class action is superior to other means for adjudicating this
8 dispute. Individual joinder is impractical. Class treatment will allow for
9 common issues to be resolved in a single forum, simultaneously, and without
10 duplication of effort and expense.
- 11 e. Public Policy Considerations: Certification of this lawsuit as a class action
12 advances the State of California's strong public interest in ensuring its
13 approximately millions of employed residents are properly paid the wages they
14 earned for the hours they worked. Class actions provide a mechanism for
15 enforcement of labor laws and allow for vindication of employee rights by
16 unnamed class members.

17 20. Common questions of law and fact as to the class members predominate over questions
18 affecting only individual members. The common questions of law and fact exist as to whether the
19 employment policies and practices formulated by Defendants and applied to the class members
20 constitute violations of California law.

21 **GENERAL ALLEGATIONS**

22 21. Defendants failed to pay Plaintiff and the class members at the lawful minimum wage
23 rate for all hours worked, resulting in unpaid minimum wages. First, Plaintiff and the class members
24 were required to wash their hands before clocking in before every shift. Specifically, on Plaintiff's
25 first day of training, Defendants instructed Plaintiff that they required all employees to wash their
26 hands prior to clocking in for each shift. This procedure required Plaintiff and the class members to
27 report first to the hand-wash station and then walk to another location to clock in on the register. This
28

1 practice resulted in 3-4 minutes of additional work each time Plaintiff and the class members
2 completed this requirement, resulting in off-the-clock work.

3 22. Additionally, Plaintiff and the class members were required to complete two days of
4 training prior to their scheduled start date. Specifically, Plaintiff attended two days of training both
5 lasting between 3 and 4 hours without pay. On the first day of training, Defendants required Plaintiff
6 to watch several training videos about the store's policy and procedures. On the second day of training,
7 Defendants required Plaintiff to shadow other employees around the store to learn about the registers,
8 the refrigerator and freezer, how to restock items, and the milkshake station. As a result, Defendants
9 failed to pay plaintiff for two shifts, resulting in unpaid wages.

10 23. Defendants required Plaintiff and the class members to incur costs for work-related
11 purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the class
12 members unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of
13 policy and practice. Defendants had a policy and practice of requiring Plaintiff and the class members
14 to use their personal cell phones to communicate with their supervisors regarding shift changes.
15 Defendants did not pay cell phone reimbursements to Plaintiff and class members.

16 24. Due to unpaid minimum wages resulting from off-the-clock work, Defendants are
17 separately liable for not paying the full amount owed to Plaintiff and other class members each payday,
18 in violation of Labor Code sections 214 and/or 204b.

19 25. Defendants failed to pay all wages and premiums owed to class members during their
20 employment and also failed to timely pay those amounts to departing employees upon separation of
21 employment. Defendants did not pay waiting time penalties for the late payments. As a result,
22 Defendants violated Labor Code sections 201, 202, and 203.

23 26. As a result, Plaintiff may recover civil penalties as an individual and on behalf of the
24 State of California and the class members, up to the maximum amount allowed as set forth under the
25 Labor Code.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES OWED**

3 **Violation of Labor Code §§ 200, 218, 1194, 1194.2 and 1197**

4 **(All Claims Alleged by Plaintiff and Class Members Against All Defendants)**

5 27. All outside paragraphs of this Complaint are incorporated into this section.

6 28. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
7 §§ 200, 218, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours
8 and Days of Work” and “Minimum Wages” sections of the applicable orders), which require non-
9 exempt employees be timely paid at least the state or local minimum wage (if higher) for each hour of
10 work, and further provide a private right of action for an employer’s failure to pay all minimum wages
11 (plus liquidated damages). In addition to minimum wages, Labor Code § 200 states that “wages”
12 includes all amounts for labor performed by employees of every description, whether the amount is
13 fixed or ascertained by the standard of time, task, piece, commission basis, or other method of
14 calculation.”

15 29. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
16 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
17 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
18 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
19 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
20 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
21 Code § 1194.2.

22 30. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of
23 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class
24 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an
25 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’
26 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2,
27 218.6 and any other applicable statutes.

[illegible]

Violation of Labor Code §§ 204, 210, 218

32. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code , 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay and which further provide a private right of action for an employer's failure to comply with litigation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due these sections, including Labor Code § 210(c)'s statutory late payment penalties.

34. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

WAITING TIME PENALTIES

35. All outside paragraphs of this Complaint are incorporated into this section.

36. This cause of action is brought by a waiting time subclass pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time

penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

37. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and class members immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

38. Plaintiff and class members are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

FOURTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Violation of Labor Code § 2802

39. All outside paragraphs of this Complaint are incorporated into this section.

40. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and a reimbursement subclass for all necessary expenditures, losses, expenses, and costs incurred by them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

41. Defendants' unlawful acts and omissions deprived Plaintiff and class members of lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class members are entitled to recover the amount unreimbursed expenses of Plaintiff and class members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2802.

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

Violation of Business and Professions Code §§ 17200 *et seq.*

42. All outside paragraphs of this Complaint are incorporated into this section.

43. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in the State of California in violation of California Business and Professions Code § 17200 by committing the foregoing wage and hour violations alleged throughout this Complaint.

44. Defendants' dependence on these unfair and/or unlawful business practices deprived Plaintiff and continue to deprive other class members of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

45. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

46. Plaintiff does not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order violations do not provide a private right of action.

47. Plaintiff and class members are entitled to injunctive relief against Defendants, restitution, and other equitable relief to return all funds over which Plaintiff and class members have an ownership interest and to prevent future damage and the public interest under Business and Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

SIXTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

48. All outside paragraphs of this Complaint are incorporated into this section.

49. Plaintiff brings this cause of action as a proxy for the State of California on behalf of the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”), codified as Labor Code section 2698 *et seq.*:

1 a. All current and former non-exempt employees who worked for Defendants in
2 California at any time from one year prior to the postmark date of the initial
3 PAGA notice through date of trial.

4 50. Plaintiff reserves the right to amend, supplement, or add to this description of the
5 aggrieved employees, according to proof.

6 51. The State of California, via the Labor and Workforce Development Agency
7 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
8 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
9 files suit is always the real party in interest.”])

10 52. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
11 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
12 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
13 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
14 action brought by an aggrieved employee on behalf of the employee and other current or former
15 employees against whom a violation of the same provision was committed pursuant to the procedures
16 specified in Section 2699.3. “

17 53. Any allegations regarding violations of the IWC Wage Orders are enforceable as
18 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
19 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

20 54. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
21 penalties under the PAGA.

22 55. On or about **June 23, 2025**, Plaintiff paid the requisite PAGA filing fee and provided
23 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
24 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
25 violations.

26 56. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
27 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
28 forth herein (the “PAGA notice”).

57. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's written PAGA notice from the LWDA.

58. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

59. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

60. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

- a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- c. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- d. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.

61. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(k).

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;

- 1 d. For division of class members into appropriate classes and/or subclasses according to
2 proof;
- 3 e. For recovery of all statutory penalties and liquidated damages;
- 4 f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- 5 g. For restitution and injunctive relief;
- 6 h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by
7 law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802 and
8 Code of Civil Procedure § 1021.5.
- 9 i. For recovery of damages in amount according to proof;
- 10 j. For all recoverable pre- and post-judgment interest;
- 11 k. For this action to be maintained as a representative action under the PAGA;
- 12 l. For Plaintiff and counsel of record to be provided with all enforcement capability as if
13 the action were brought by the State of California or the California Division of Labor
14 Enforcement;
- 15 m. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 16 n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
17 permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699,
18 and Code of Civil Procedure section 1021.5 and any other applicable sections; and
- 19 o. For such other relief the Court deems just and proper.

20
21 Dated: August 29, 2025

Ferraro Vega Employment Lawyers, Inc.

22 

23 Nicholas J. Ferraro

24 Lauren N. Vega

25 Mariela R. Romo

26 *Attorneys for Plaintiff Saul Romo*

27

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EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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June 23, 2025

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

PGC Foods, LLC
23736 Birtcher Drive
Lake Forrest, CA 92630

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **SAUL ROMO** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

PGC FOODS, LLC

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices

affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(s). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Cashier from about October 2024 to December 2024. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage **Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those

fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

First, Plaintiff and the aggrieved employees were required to wash their hands before clocking in before every shift. Specifically, on Plaintiff’s first day of training, Defendants instructed Plaintiff that they required all employees to wash their hands prior to clocking in for each shift. This procedure required Plaintiff and the aggrieved employees to report first to the hand-wash station and then walk to another location to clock in on the register. This practice resulted in 3-4 minutes of additional work each time Plaintiff and the aggrieved employees completed this requirement, resulting in off-the-clock work.

Additionally, Plaintiff and the aggrieved employees were required to complete two days of training prior to their scheduled start date. Specifically, Plaintiff attended two days of training both lasting between 3 and 4 hours without pay. On the first day of training, Defendants required Plaintiff to watch several training videos about the store’s policy and procedures. On the second day of training, Defendants required Plaintiff to shadow other employees around the store to learn about the registers, the refrigerator and freezer, how to restock items, and the milkshake station. As a result, Defendants failed to pay plaintiff for two shifts, resulting in unpaid wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages During Employment **Violation of Labor Code §§ 204, 204b, 210**

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not

more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As stated above, Plaintiff and the aggrieved employees were required to wash their hands before clocking in before every shift. Each time Plaintiff and the aggrieved employees completed this requirement, it resulted in unpaid off-the-clock work.

As explained above, Defendants underpaid Plaintiff and other aggrieved employees’ minimum, regular, overtime wages, paid sick leave, and premium pay. Defendants are separately liable for not paying the full amount owed to Plaintiff and other aggrieved employees each payday, in violation of Labor Code sections 214 and/or 204b.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages Upon Separation of Employment **Violation of Labor Code §§ 201, 202, 203, 256**

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties

for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unreimbursed Employee Expenses **Violation of Labor Code §§ 2802, 2804**

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Defendants had a policy and practice of requiring Plaintiff and the aggrieved employees to use their personal cell phone for business purposes.

Plaintiff and aggrieved employees were required to use their personal cell phone to communicate with their supervisors regarding shift changes. Defendants did not pay cell phone reimbursements to Plaintiff and aggrieved employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Attorneys' Fees and Costs
Labor Code § 2699(k)(1)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(k)(1).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

A handwritten signature in black ink, appearing to read "Mariela Romo". The signature is fluid and cursive, with a large initial "M" and a distinct "R" at the end.

Mariela Romo

Cc Plaintiff Saul Romo
HR Representative, pgcfoods@graffiusfoods.com
lmp