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13 Attorneys for Plaintiff(s),

14 MICHELLE R. VARNER, and all others similarly situated

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF RIVERSIDE**
17 **(UNLIMITED JURISDICTION)**

18 MICHELLE R. VARNER, on behalf of herself
19 and all others similarly situated, and the general
20 public, and as an “aggrieved employee” on
21 behalf of other “aggrieved employees” and the
State of California under the Labor Code Private
Attorneys General Act of 2004,

22 *Plaintiff(s),*

23 vs.

24 MEDCARE FARMS, a California corporation;
25 MEDCARE FARMS COSTA MESA, LLC, a
26 California limited liability company;
27 MEDCARE FARMS 2.0, LLC, a California
28 limited liability company; NGU HOLDINGS,
INC., a California corporation; MEDCARE AN
AGRICULTURAL COOPERATIVE, a

Case No. CVRI2301395

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code



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1 California corporation; MEDCARE CORONA,
2 a California corporation; MEDCARE
3 ENTERPRISES, a California corporation;
4 MEDCARE MANUFACTURING, LLC, a
5 California limited liability company;
6 MEDCARE LLC, a California limited liability
7 company; and DOES 1–50, inclusive,

Defendants.

§203);

7. Unfair Competition (Bus. & Prof. Code
§§ 17200, et seq.); and

8. Civil Penalties (Lab. Code §§ 2898, *et*
seq.)

JURY TRIAL DEMANDED



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1 Plaintiff, Michelle R. Varner (hereafter “Plaintiff” or “Varner”), on behalf of herself and
2 all others similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Medcare Farms,
9 a California corporation, Medcare Farms Costa Mesa, LLC, a California limited liability
10 company, Medcare Farms 2.0, LLC, a California limited liability company, NGU Holdings, Inc.,
11 a California corporation, Medcare an Agricultural Cooperative, a California corporation,
12 Medcare Corona, a California corporation, Medcare Enterprises, a California corporation,
13 Medcare Manufacturing, LLC, a California limited liability company, Medcare LLC, a
14 California limited liability company, and Does 1 through 50, inclusive (collectively
15 “Defendants”).

16 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
17 her and other similarly situated workers for unpaid wages, statutory penalties, interest, and
18 related relief. These claims are based on Defendants’ failures to:

19 (A) Pay all wages, including minimum, regular, overtime and doubletime
20 wages, earned for all hours worked at the correct rates of pay;

21 (B) Provide all meal periods;

22 (C) Authorize and permit all rest breaks;

23 (D) Pay premium wages for unprovided meal periods;

24 (E) Pay premium wages for unprovided rest breaks;

25 (F) Indemnify for necessary work-related expenditures;

26 (G) Issue only accurate and complete itemized wage statements; and

27 (H) Timely pay wages upon termination of employment;

28 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class
action.

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II. THE PARTIES

3. Plaintiff Michelle R. Varner is a resident of California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an “aggrieved employee” within the meaning of Labor Code § 2699 (c).

4. Defendant Medcare Farms is a corporation organized and existing under the laws of California and a citizen of California based on Plaintiff’s information and belief.

5. Defendant Medcare Farms Costa Mesa LLC is a limited liability company organized and existing under the laws of California and a citizen of California based on Plaintiff’s information and belief.

6. Defendant Medcare Farms 2.0, LLC is a limited liability company organized and existing under the laws of California and a citizen of California based on Plaintiff’s information and belief.

7. Defendant NGU Holdings, Inc. is a corporation organized and existing under the laws of California and a citizen of California based on Plaintiff’s information and belief.

8. Defendant Medcare an Agricultural Cooperative is a corporation organized and existing under the laws of California and a citizen of California based on Plaintiff’s information and belief.

9. Defendant Medcare Corona is a corporation organized and existing under the laws of California and a citizen of California based on Plaintiff’s information and belief.

10. Defendant Medcare Enterprises is a corporation organized and existing under the laws of California and a citizen of California based on Plaintiff’s information and belief.

11. Defendant Medcare LLC is a limited liability company organized and existing under the laws of California and a citizen of California based on Plaintiff’s information and belief.

12. Defendant Medcare Manufacturing, LLC is a limited liability company organized and existing under the laws of California and a citizen of California based on Plaintiff’s information and belief.

13. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.



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1 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
2 Defendants when ascertained.

3 14. Plaintiff is informed and believes and thereon alleges that, at all relevant times
4 herein, all Defendants were the agents, employees and/or servants, masters, or employers of the
5 remaining defendants, and in doing the things hereinafter alleged, were acting, or failing to act
6 within the course and scope of such agency, employment, direction and control, and with the
7 approval and ratification of each of the other Defendants.

8 15. At all relevant times, in perpetrating the acts and omissions alleged herein,
9 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
10 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
11 Members or otherwise complying with their rights in accordance with applicable California labor
12 laws as alleged herein.

13 16. At all relevant times, in perpetrating the acts and omissions alleged herein,
14 Defendants, and each of them, acted pursuant to and in furtherance of a policy and/or practice,
15 or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the
16 below-described class in accordance with applicable laws as alleged herein.

17 **III. CLASS ALLEGATIONS**

18 17. This action has been brought and may be maintained as a class action pursuant to
19 California Code of Civil Procedure section 382 because there is a well-defined community of
20 interest among the persons who comprise the readily ascertainable class defined below and
21 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
22 a class action.

23 18. **Class Definition:** The Class is defined as follows: All persons Defendants
24 employed in California as hourly employees, including cannabis growers, budtenders, and
25 dispatchers, individuals performing work comparable to the aforementioned, compensated
26 comparably to the aforementioned, and individuals in similar positions, at any time during the
27 period beginning four years prior to the filing of this action and ending on the date that final
28 judgment is entered in this action (“Class” or “Class Members”).

19 19. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
20 right to amend or modify the class definition with greater specificity, by further division into
21 subclasses and/or by limitation to particular issues.



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1 20. **Numerosity:** The Class Members are so numerous that the individual joinder of
2 each individual Class Member is impractical. While Plaintiff does not currently know the exact
3 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
4 minimum required for numerosity under California laws.

5 21. **Commonality and Predominance:** Common questions of law and fact exist as
6 to all Class Members and predominate over any questions which affect only individual Class
7 Members. These questions include, but are not limited to:

8 A. Whether Defendants failed to pay all wages earned to Class Members for
9 all hours worked at the correct rates of pay, including, all overtime, doubletime, rest break
10 premium, and meal period premium wages;

11 B. Whether Defendants failed to provide the Class Members with all meal
12 periods in compliance with California law;

13 C. Whether Defendants failed to authorize and permit the Class Members to
14 take all rest periods in compliance with California law;

15 D. Whether Defendants failed to indemnify the Class Members for the
16 reasonable expenses they incurred during the course of performing their duties;

17 E. Whether Defendants knowingly and intentionally failed to provide the
18 class with accurate and complete itemized wage statements;

19 F. Whether Defendants willfully failed to provide the class with timely final
20 wages;

21 G. Whether Defendants engaged in unfair competition within the meaning of
22 Business and Professions Code sections 17200, *et seq.*, with respect to the Class; and

23 H. Whether Class Members are entitled to restitution of money or property
24 that Defendants may have acquired from them through alleged Labor Code violations.

25 22. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
26 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
27 practice, or lack thereof, which resulted in Defendants failing to comply with the California
28 Labor Code, the Wage Order, and the Business and Professions Code.

 23. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class



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Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

24. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

25. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

IV. STATEMENT OF FACTS

26. The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis..." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities." Wage Order, § 2(H). At all relevant times during the applicable limitations period, the Defendants, Varner, and all other Class Members were covered by the Wage Order because the Defendants operated, and Varner and all of the Class Members worked for, one or more establishments operated as retail cannabis farms and dispensaries. Accordingly, Varner and all other Class Members are entitled to the protections the Wage Order provides.

27. On approximately April 28, 2022, the Defendants began to employ Varner in Lake Elsinore in the position of hourly, non-exempt farmer, budtender, and dispatcher. The Defendants continuously employed her in that capacity until on or about August 18, 2022 when



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1 her employment ended.

2 28. At all relevant times, the Defendants issued wages to Varner and all other Class
3 Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant
4 times, the Defendants classified Varner and all other Class Members as non-exempt employees
5 entitled to the protections of the Labor Code and the Wage Order.

6 29. At all relevant times, the Defendants failed to provide Varner and all other Class
7 Members with all timely 30-minute, off-duty meal periods. The Defendants prohibited Varner
8 and the Class Members from ignoring their phones for work-related communications at any time
9 during the workday. The Defendants required Varner and all other Class Members to promptly
10 respond to any incoming messages from clients, drivers, and/or management. Defendants would
11 discipline them if they did not comply. Consequently, the Defendants forced Varner and the
12 Class Members to forgo their 30-minute meal period without compensation. The Defendants
13 also failed to pay premium wages for days on which they failed to provide Varner and all other
14 Class Members with meal periods as required by law.

15 30. At all relevant times, the Defendants failed to authorize and permit Varner and
16 all other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
17 or major portion thereof. The Defendants prohibited Varner and the Class Members from
18 ignoring their phones for work-related communications at any time during the workday. The
19 Defendants required Varner and all other Class Members to promptly respond to any incoming
20 messages from clients, drivers, and/or management. Defendants would discipline them if they
21 did not comply. Consequently, the Defendants forced Varner and the Class Members to forgo
22 their 10-minute, duty-free rest breaks. The Defendants also failed to pay premium wages for
23 days on which they failed to authorize and permit Varner and all other Class Members to take
24 rest breaks as required by law.

25 31. At all relevant times, the Defendants required Varner and all other Class Members
26 to incur certain business expenses in the course of performing their duties. The Defendants
27 required Varner and all other Class Members to supply mobile phones to perform their job duties.
28 However, the Defendants did not provide these items and did not reimburse Varner and the other
Class Members for these items. The Defendants required Varner and all other Class Members to
use their personal cell phones to conduct company business and record their worktime and other
work-related events. The Defendants required Varner and all other Class Members to monitor



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1 their personal mobile phones during all working hours, including rest and meal breaks, for work-
2 related communications. The Defendants required Varner and all other Class Members to
3 conduct all company business on their personal cell phones, but did not reimburse them for the
4 use of their personal cell phones or any telecom expenses incurred.

5 32. At all relevant times, the Defendants failed to issue to Varner and all other Class
6 Members complete and accurate wage statements that state all hours worked at the correct rates
7 of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the
8 wage statements they issued to Varner and all other Class Members the unpaid wages discussed
9 above. The wage statements fail to state all earned wages, including overtime and doubletime
10 wages, all rest break premium wages earned, all meal period premium wages earned, and related
11 information.

12 33. At all relevant times, the Defendants also failed to timely pay Varner and all other
13 Class Members all earned wages as described above during and at the conclusion of employment.

14 34. At all relevant times, the Defendants failed to maintain accurate employee records
15 of Varner and all other Class Members.

16 35. For the reasons stated herein, Plaintiff alleges that, as a result of Defendants'
17 unlawful practices and policies, Plaintiff and the Class Members were:

18 A. Not paid all wages earned for all hours worked at the correct rates of pay;
19 B. Not provided with all off duty meal periods;
20 C. Not authorized and permitted to take all rest break periods;
21 D. Not paid one hour's pay for each workday in which Defendants failed to
22 authorize and permit them to take one or more timely rest periods;

23 E. Not paid one hour's pay for each workday in which Defendants failed to
24 provide them with one or more timely meal periods;

25 F. Not paid all wages earned, including, but not limited to, minimum,
26 regular, overtime, and doubletime wages for work performed while clocked out;

27 G. Not indemnified for all necessary business expenditures incurred during
28 the discharge of their duties;

H. Not provided with accurate and complete wage statements; and

I. Not timely paid all earned and unpaid wages at the time their employment
ended.



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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES AT THE CORRECT RATES**

3 **Lab. Code §§ 510, 1194, 1197, and 1198**

4 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

5 36. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 37. At all relevant times, Plaintiff and the Class Members have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

7 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
8 **THE CORRECT RATES OF PAY**

9 38. Section 2 of the Wage Order defines “hours worked” as “the time during which
10 an employee is subject to the control of an employer, and includes all the time the employee is
11 suffered or permitted to work, whether or not required to do so.”

12 39. Section 3 of the Wage Order states:

13 (A) Daily Overtime - General Provisions

14 (1) The following overtime provisions are applicable to
15 employees 18 years of age or over and to employees 16 or
16 17 years of age who are not required by law to attend school
17 and are not otherwise prohibited by law from engaging in the
18 subject work. Such employees shall not be employed more
19 than eight (8) hours in any workday or more than 40 hours
20 in any workweek unless the employee receives one and one-
21 half (1 ½) times such employee’s regular rate of pay for all
22 hours worked over 40 hours in the workweek. Eight (8)
23 hours of labor constitutes a day’s work. Employment beyond
24 eight (8) hours in any workday or more than six (6) days in
25 any workweek is permissible provided the employee is
26 compensated for such overtime at not less than:

27 (a) One and one-half (1 ½) times the employee’s regular
28 rate of pay for all hours worked in excess of eight (8)
hours up to and including 12 hours in any workday,
and for the first eight (8) hours worked on the seventh
(7th) consecutive day of work in a workweek.

(b) Double the employee’s regular rate of pay for all
hours worked in excess of 12 hours in any workday
and for all hours worked in excess of eight (8) hours



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on the seventh (7th) consecutive day of work in a workweek.

- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

40. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

41. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

42. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

43. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

44. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

45. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (*See Morillion v. Royal Packing Co. (2000) 22 Cal.4th 575, 585.*)



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1 46. At all relevant times during the applicable limitations period, Defendants failed
2 to compensate Plaintiff and the Class Members for all hours worked, including, but not limited
3 to minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
4 doubletime hours, respectively, that they worked at the correct rates of pay.

5 47. At all relevant times during the applicable limitations period, the Defendants
6 prohibited Varner and the Class Members from ignoring their phones for work-related
7 communications at any time during their workday. The Defendants required Varner and all other
8 Class Members to promptly respond to any incoming messages from clients, drivers, and/or
9 management. Defendants would discipline them if they did not comply. Consequently, the
10 Defendants forced Varner and the other Class Members to work hours without compensation.

11 48. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
12 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
13 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
14 rates of pay as required by California law.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL PERIODS**

17 **Lab. Code §§ 226.7 and 512**

18 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

19 49. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

20 50. At all relevant times during the applicable limitations period, Plaintiff and the
21 Class Members have been employees of Defendants and entitled to the benefits and protections
22 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

23 51. In relevant part, California Labor Code § 1198 states:

24 The maximum hours of work and the standard conditions of labor fixed by
25 the commission shall be the maximum hours of work and the standard
26 conditions of labor for employees. The employment of any employee for
27 longer hours than those fixed by the order or under conditions of labor
28 prohibited by the order is unlawful.

 52. In relevant part, In relevant part, California Labor Code § 512 states:

 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



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not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

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

53. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

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

(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

54. In relevant part, California Labor Code § 226.7 states:



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1 (b) An employer shall not require an employee to work during a meal
2 or rest period mandated pursuant to an applicable statute, or
3 applicable regulation, standard, or order of the Industrial Welfare
4 Commission, the Occupational Safety and Health Standards Board,
5 or the Division of Occupational Safety and Health.

6 (c) If an employer fails to provide an employee a meal period or rest
7 period in accordance with a state law, including, but not limited to,
8 an applicable statute or applicable regulation, standard, or order of
9 the Industrial Welfare Commission, the Occupational Safety and
10 Health Standards Board, or the Division of Occupational Safety and
11 Health, the employer shall pay the employee one additional hour of
12 pay at the employee's regular rate of compensation for each work
13 day that the meal or rest period is not provided.

14 55. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
15 Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
16 they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
17 to a second 30-minute meal period when they worked more than 10 hours in a workday.

18 56. Defendants intentionally failed to provide Plaintiff and the Class Members with
19 all required 30-minute duty free meal periods in accordance with the Wage Order. The
20 Defendants prohibited Varner and the Class Members from ignoring their phones for work-
21 related communications at any time during the workday. The Defendants required Varner and
22 all other Class Members to promptly respond to any incoming messages from clients, drivers,
23 and/or management. Defendants would discipline them if they did not comply. Consequently,
24 the Defendants forced Varner and the other Class Members to forgo their 30-minute meal periods
25 without compensation.

26 57. At all relevant times, Defendants failed to provide Plaintiff and the Class
27 Members with all timely meal periods. Defendants denied Plaintiff and the other Class Members
28 their 30-minute off-duty meal period within the first five hours of work. Furthermore,
29 Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and
30 the other Class Members with timely meal periods.

31 58. Plaintiff is informed and believes and thereon alleges that, at all relevant times
32 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
33 which resulted in Defendants not providing Plaintiff and the Class Members with all off-duty
34 meal periods required by California law.



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1 employer shall pay the employee one (1) hour of pay at the
2 employee's regular rate of compensation for each workday that the
rest period is not provided.

3 65. In relevant part, California Labor Code § 226.7 states:

4 (b) An employer shall not require an employee to work during a meal
5 or rest period mandated pursuant to an applicable statute, or
6 applicable regulation, standard, or order of the Industrial Welfare
7 Commission, the Occupational Safety and Health Standards Board,
or the Division of Occupational Safety and Health.

8 (c) If an employer fails to provide an employee a meal period or rest
9 period in accordance with a state law, including, but not limited to,
10 an applicable statute or applicable regulation, standard, or order of
11 the Industrial Welfare Commission, the Occupational Safety and
12 Health Standards Board, or the Division of Occupational Safety and
13 Health, the employer shall pay the employee one additional hour of
pay at the employee's regular rate of compensation for each work
day that the meal or rest period is not provided.

14 66. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
15 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
16 of work, or major fraction thereof.

17 67. Defendants intentionally failed to authorize and permit Plaintiff and the Class
18 Members to take all 10-minute rest periods free from any work duties in accordance with the
19 Wage Order. The Defendants prohibited Varner and the Class Members from ignoring their
20 phones for work-related communications at any time during the workday. The Defendants
21 required Varner and all other Class Members to promptly respond to any incoming messages
22 from clients, drivers, and/or management. Defendants would discipline them if they did not
23 comply. Consequently, the Defendants forced Varner and the Class Members to forgo their 10-
minute, duty-free rest breaks.

24 68. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
25 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
26 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
27 Plaintiff and the other Class Members to take timely rest periods.

28 69. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
Class Members to take 10-minute, paid, duty-free rest breaks every four hours worked or major



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1 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
2 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
3 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they
4 failed to authorize and permit them to take 10-minute rest periods every four hours worked or
major fraction thereof.

5 70. Plaintiff is informed and believes and thereon alleges that, at all relevant times
6 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
7 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
8 take all rest breaks required by California law.

9 71. Defendants failed to provide Plaintiff with all required rest breaks in accordance
10 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
11 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
12 which resulted in Defendants not providing the Class Members with all rest breaks required by
California law.

13 72. Defendants failed to pay Plaintiff the additional wages required by California
14 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
15 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
16 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing
17 the Class Members with additional wages for all rest breaks not provided to them as required by
18 California Labor Code § 226.7.

19 73. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
20 have suffered damages in amounts subject to proof to the extent they were not paid additional
21 wages owed for all rest breaks not provided to them.

22 74. By reason of the above, Plaintiff and the Class Members are entitled to premium
23 wages for workdays in which one or more rest breaks were not provided to them pursuant to
California Labor Code § 226.7.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code § 2802

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

28 75. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.



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1 76. In pertinent part, California Labor Code § 2802(a) states: “An employer shall
2 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
3 direct consequence of the discharge of his or her duties.”

4 77. California Labor Code § 1198 prohibits employers from employing their
5 employees under conditions prohibited by the Wage Order.

6 78. At all relevant times, Defendants required Plaintiff and the Class Members to
7 incur certain business expenses in the course of performing their duties.

8 79. As described above, the Defendants required Varner and all other Class Members
9 to incur certain business expenses in the course of performing their duties. The Defendants
10 required Varner and all other Class Members to supply mobile phones to perform their job duties.
11 However, the Defendants did not provide these items and did not reimburse Varner and the other
12 Class Members for these items. The Defendants required Varner and all other Class Members to
13 use their personal cell phones to conduct company business and record their worktime and other
14 work-related events. The Defendants required Varner and all other Class Members to monitor
15 their personal mobile phones during all working hours, including rest and meal breaks for work-
16 related communications. The Defendants required Varner and all other Class Members to
17 conduct all company business on their personal cell phones but did not reimburse them for the
18 use of their personal cell phones or any telecom expenses incurred.

19 80. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
20 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
21 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
22 during the course of performing their duties.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

25 **Lab. Code § 226**

26 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

27 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE** 28 **STATEMENTS**

81. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

82. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members
were entitled to receive semi-monthly or at the time of each payment of wages, an accurate



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itemized statement showing:

- A. Gross wages earned;
- B. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- C. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- D. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
- E. Net wages earned;
- F. The inclusive dates of the period for which the employee is paid;
- G. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
- H. The name and address of the legal entity that is the employer; and
- I. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

83. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone one or more of the following:

- A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);
- B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;
- C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period;



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1 D. The name of the employee and only the last four digits of his or her social
2 security number or an employee identification number other than a social security number; and

3 E. The number of piece-rate units earned and the piece rate.

4 84. "Promptly and easily determine," as stated in California Labor Code § 226(e),
5 means a reasonable person would be able to readily ascertain the information without reference
6 to other documents or information.

7 85. As alleged herein, at all relevant times during the applicable limitations period,
8 Defendants violated California Labor Code section 226 because they did not properly and
9 accurately itemize each employee's gross wages earned, net wages earned, the total hours
10 worked, the corresponding number of hours worked at each rate by the employee, and other
11 requirements of California Labor Code section 226. Defendants knowingly and intentionally did
12 not issue either as a detachable part of the check, draft, or voucher paying the employee's wages,
13 or separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
14 Members that state all earned wages including minimum, regular, overtime, and doubletime
15 wages, all rest break premium wages earned, all meal premium wages earned, and other required
16 information.

17 86. Defendants' failure to provide Plaintiff and the other Class Members with
18 accurate wage statements was knowing and intentional. Defendants had the ability to provide
19 Plaintiff and the other Class Members with accurate wage statements but intentionally provided
20 wage statements that Defendants knew were not accurate.

21 87. As a result of being provided with inaccurate wage statements by Defendants,
22 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
23 wage statements were violated and they were misled about the amount of wages they had actually
24 earned and were owed. In addition, the absence of accurate information on their wage statements
25 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
26 and mathematical computations to determine the amounts of wages owed, has caused difficulty
27 and expense in attempting to reconstruct time and pay records and/or has led to the submission
28 of inaccurate information about wages to state and federal government agencies. Further,
Plaintiff and the other Class Members were not able to ascertain from the wage statements
whether Defendants complied with their obligations under California Labor Code section 226(a).

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SIXTH CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

Lab. Code §§ 201, 202, and 203

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

88. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

89. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201, 202, and 203, and the Wage Order.

90. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

91. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours' notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours' notice before quitting are due and payable within 72 hours.

92. The Defendants failed to pay Varner and all other Class Members whose employment ended all of the earned, but unpaid wages described above by the conclusion of their employment with Varner, including earned minimum, regular, overtime and doubletime wages, unprovided meal premium wages, unprovided rest break premium wages, and other compensation.

93. By failing to pay such earned wages to Plaintiff and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

94. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Class Members all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

95. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

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SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

Bus. & Prof. Code §§ 17200, *et seq.*

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

96. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

97. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

98. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

99. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of earned wages, missed meal period premium wages, missed rest period premium wages, phone expenses, and comparable money and property.

100. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

101. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

Lab. Code §§ 2698, *et seq.*

(By Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California, against all Defendants)

102. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

103. The "Aggrieved Employees" are all members of the Class defined above who



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Defendants employed during the period beginning March 10, 2022, and ending on the date that final judgment is entered in this action.

104. Labor Code § 204 states:

- (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...
- (b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.
- (2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.
- (c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.
- (d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

105. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

106. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.



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1 107. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
2 behalf of themselves and other current or former employees, to bring a civil action to recover civil
3 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

4 108. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the
5 Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations
6 of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198,
7 and 2802 during the applicable limitations period in the following amounts:

8 A. For violations of California Labor Code § 204, one hundred dollars
9 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
10 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
(penalty amounts established by California Labor Code § 210).

11 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
12 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
13 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
14 California Labor Code § 226.3).

15 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
16 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
17 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
18 established by California Labor Code § 558).

19 D. For violations of California Labor Code § 1174, five hundred dollars
20 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
21 amounts established by Labor Code § 1174.5).

22 E. For violations of California Labor Code § 1197, one hundred dollars
23 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
24 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
(regardless of whether the initial violations were intentionally committed) (penalty amounts
25 established by California Labor Code § 1197.1).

26 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, 1198, and
27 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
28 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).



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109. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated March 10, 2023, Plaintiff filed written notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the notice to the LWDA dated March 10, 2023 is attached as **Exhibit A**. Plaintiff submitted his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate these allegations.

110. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

105. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for relief and judgment against Defendants as follows:

- A. An order that the action be certified as a class action with respect to Plaintiff’s claims for violations of California law;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages, including minimum, regular, overtime, double-time, split shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery time, and reporting time wages;
- E. Liquidated damages;
- F. Statutory penalties, including waiting time penalties;
- G. Civil penalties;
- H. Restitution;
- I. Declaratory relief;
- J. Actual damages;
- K. Pre-judgment interest;
- L. Costs of suit;



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1 M. Reasonable attorneys' fees; and

2 N. Such other relief as the Court deems just and proper.

3 **VI. DEMAND FOR JURY TRIAL**

4 Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on
5 all issues so triable.

6 Respectfully submitted,

7 THE SPIVAK LAW FIRM

8
9 Dated: May 25, 2023

By:



10 DAVID G. SPIVAK,
11 JENICA P. LEONARD, Attorneys for
12 Plaintiff(s), MICHELLE R. VARNER,
13 and all others similarly situated
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EXHIBIT A



SENT BY CERTIFIED MAIL AND EMAIL

March 10, 2023

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Michelle R. Varner / Medicare Farms, et al.
Supplement Letter for LWDA Case No. LWDA-CM-936136-23

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Michelle R. Varner (hereafter “Varner” or “Complainant”) provides notice that Medicare Farms, a California corporation, Medicare Farms Costa Mesa, LLC, a California limited liability company, Medicare Farms 2.0, LLC, a California limited liability company, NGU Holdings, Inc., a California corporation, Medicare an Agricultural Cooperative, a California corporation, Medicare Corona, a California corporation, Medicare Enterprises, a California corporation, Medicare Manufacturing, LLC, a California limited liability corporation, Medicare LLC, a California limited liability company, and related entities (collectively “the Medicare Farms Employers” or “the Employers”) violated her rights and those of all other individuals the Medicare Farms Employers have employed or otherwise contracted with in California as hourly employees, including cannabis farmers, growers, budtenders, sellers, dispatchers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and related employee protections. On behalf of herself and all other Aggrieved Employees, Varner hereby provides this notice to the Labor & Workforce Development Agency and the Medicare Farms Employers and their agents and representatives.

At all relevant times, the Medicare Farms Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California.

Varner and all other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”) section 2, subdivision (c) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately April 28, 2022 the Medicare Farms Employers began to employ Varner in Lake Elsinore in the position of hourly, non-exempt farmer, budtender, and dispatcher. The Medicare Farms Employers continuously employed her in that capacity until on or about August 18, 2022 when her employment ended.

At all relevant times, the Medicare Farms Employers issued wages to Varner and all other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Medicare Farms Employers classified Varner and all other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

At all relevant times, the Medicare Farms Employers failed to provide Varner and all other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Medicare Farms Employers required Varner and the Aggrieved Employees to monitor their phones at all times, including meal periods clocked out and rest breaks. The Medicare Farms Employers required Varner and all other Aggrieved Employees to promptly respond to any incoming messages from clients, drivers, and/or management. The Medicare Farms Employers would discipline them if they did not comply. Consequently, the Medicare Farms Employers forced Varner and the Aggrieved Employees to forgo their 30-minute, duty-free meal period without compensation. The Medicare Farms Employers also failed to pay premium wages for days on which they failed to provide Varner and all other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Medicare Farms Employers failed to authorize and permit Varner and all other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Medicare Farms Employers required Varner and the Aggrieved Employees to monitor their phones at all times, including meal periods clocked out and rest breaks. The Medicare Farms Employers required Varner and all other Aggrieved Employees to promptly respond to any incoming messages from clients, drivers, and/or management. The Medicare Farms

Employers would discipline them if they did not comply. Consequently, the Medicare Farms Employers forced Varner and the Aggrieved Employees to forgo their 10-minute, duty-free rest breaks. The Medicare Farms Employers also failed to pay premium wages for days on which they failed to authorize and permit Varner and all other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Medicare Farms Employers required Varner and all other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Medicare Farms Employers required Varner and all other Aggrieved Employees to supply mobile phones to perform their job duties. However, the Medicare Farms Employers did not provide these items and did not reimburse Varner and the other Aggrieved Employees for these items. The Medicare Farms Employers required Varner and all other Aggrieved Employees to use their personal cell phones to conduct company business and record their worktime and other work-related events. The Medicare Farms Employers required Varner and all other Aggrieved Employees to monitor their personal mobile phones during all working hours, including rest and meal breaks, for work-related communications. The Medicare Farms Employers required Varner and all other Aggrieved Employees to conduct all company business on their personal cell phones, but did not reimburse them for the use of their personal cell phones or any telecom expenses incurred.

At all relevant times, the Medicare Farms Employers failed to issue to Varner and all other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Medicare Farms Employers knowingly and intentionally failed to state on the wage statements they issued to Varner and all other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all earned wages, including minimum, regular, overtime, and doubletime wages, all rest break premium wages earned, all meal period premium wages earned, and related information.

The Medicare Farms Employers also failed to timely pay Varner and all other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Medicare Farms Employers failed to maintain accurate employee records of Varner and all other Aggrieved Employees.

For the reasons stated herein, Varner alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all other Aggrieved Employees:

- (a) The Medicare Farms Employers failed to pay Varner and all other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Medicare Farms Employers failed to provide Varner and all other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Medicare Farms Employers failed to authorize and permit Varner and all other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Medicare Farms Employers failed to compensate Varner and all other Aggrieved Employees at one hour's pay for each day in which the Medicare Farms Employers failed to provide them with one or more meal periods as required by law;
- (e) The Medicare Farms Employers failed to compensate Varner and all other Aggrieved Employees at one hour's pay for each day in which the Medicare Farms Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Medicare Farms Employers failed to indemnify Varner and all other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Medicare Farms Employers knowingly and intentionally failed to issue to Varner and all other Aggrieved Employees accurate and complete wage statements; and
- (h) The Medicare Farms Employers willfully failed to timely pay Varner and all other Aggrieved Employees all earned and unpaid wages during their employment with the Medicare Farms Employers and when their employment ended.

Accordingly, Varner now seeks civil penalties on behalf of herself and all other Aggrieved Employees based on the Medicare Farms Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The Wage Order defines “Mercantile Industry” to mean, “any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities.” Wage Order, § 2(H). At all relevant times during the applicable limitations period, the Medicare Farms Employers, Varner, and all of the Aggrieved Employees were covered by the Wage Order because the Medicare Farms Employers operated, and Varner and all of the Aggrieved Employees worked for, one or more retail cannabis farms and dispensaries. Accordingly, Varner and all other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to

recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

The Medicare Farms Employers required Varner and the Aggrieved Employees to work off the clock and without pay, including work during meal and rest periods.

At all relevant times during the applicable limitations period, the Medicare Farms Employers failed to compensate Varner and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Varner now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1); and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the

employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Medicare Farms Employers failed to provide Varner and all other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Medicare Farms Employers required Varner and the Aggrieved Employees to monitor their phones at all times, including meal periods clocked out and rest breaks. The Medicare Farms Employers required Varner and all other Aggrieved Employees to promptly respond to any incoming messages from clients, drivers, and/or management. The Medicare Farms would discipline them if they did not comply. Consequently, the Medicare Farms Employers forced Varner and the Aggrieved Employees to forgo their 30-minute, duty-free, meal period without compensation. The Medicare Farms Employers also failed to pay premium wages for days on which they failed to provide

Varner and all other Aggrieved Employees with meal periods as required by law. Accordingly, Varner now seeks civil penalties for these Labor Code violations that the Medicare Farms Employers have committed against her and all other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(G) of the Wage Order states:

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “[t]he employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based

on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Medicare Farms Employers failed to authorize and permit Varner and all other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Medicare Farms Employers prohibited Varner and the other Aggrieved Employees from ignoring their phones at any time during the workday. The Medicare Farms Employers required Varner and all

other Aggrieved Employees to promptly respond to any incoming messages from clients, drivers, and/or management. The Medicare Farms Employers would discipline them if they did not comply. Consequently, the Medicare Farms Employers forced Varner and the Aggrieved Employees to forgo their 10-minute, duty-free rest breaks. The Medicare Farms Employers also failed to pay premium wages for days on which they failed to authorize and permit Varner and all other Aggrieved Employees to take rest breaks as required by law. Accordingly, Varner now seeks civil penalties for these Labor Code violations that the Medicare Farms Employers have committed against her and all other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

At all relevant times, the Medicare Farms Employers required Varner and all other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Medicare Farms Employers required Varner and all other Aggrieved Employees to supply mobile phones to perform their job duties. However, the Medicare Farms Employers did not provide these items and did not reimburse Varner and the other Aggrieved Employees for these items. The Medicare Farms Employers required Varner and all other Aggrieved Employees to use their personal cell phones to conduct company business and record their worktime and other work-related events. The Medicare Farms Employers required Varner and all other Aggrieved Employees to monitor their personal mobile phones during all working hours, including rest and meal breaks, for work-related communications. The Medicare Farms Employers required Varner and all other Aggrieved Employees to conduct all company business on their personal cell phones, but did not reimburse them for the use of their personal cell phones or any telecom expenses incurred. Accordingly, Varner seeks civil penalties for these Labor Code violations that the Medicare Farms Employers have committed against her and all other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;

2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times, the Medicare Farms Employers failed to issue to Varner and all other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay and all wages earned. The Medicare Farms Employers knowingly and intentionally failed to state on the wage statements they issued to Varner and all other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all earned wages, including overtime and doubletime wages, all rest break premium wages earned, all meal period premium wages earned, and related information. Accordingly, Varner seeks civil penalties for the Labor Code violations that the Medicare Farms Employers have committed against her and all other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of

Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, 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 thereafter, unless the employee has given 72 hours' previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Medicare Farms Employers failed to pay Varner and all other Aggrieved Employees whose employment ended all of the earned, but unpaid wages described above by the conclusion of their employment, including earned overtime and double time wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. By failing to pay Varner and all other Aggrieved Employees as set forth above at the end of employment, the Medicare Farms Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all other Aggrieved Employees, Varner seeks civil penalties from the Medicare Farms Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200

per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Medicare Farms Employers failed to pay Varner and all other Aggrieved Employees whose employment ended all of the earned, but unpaid wages described above by the conclusion of their employment with Varner, including earned overtime and double time wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. As a result, the Medicare Farms Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Varner and all other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Varner seeks civil penalties on behalf of herself and all other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Michelle R. Varner will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David G. Spivak Esq.

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cc: Ms. Michelle R. Varner (Emailed)

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