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November 15, 2013

VIA U.S CERTIFIED POSTAL MAIL-RETURN RECEIPT

Marty Morgenstern
Agency Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 94814

Peninsula Packaging, LLC
1030 N Anderson Road
Exeter, CA 93221
Counsel: Latham & Watkins LLP
Jason H. Lee, Esq.
Linda M. Inscoe, Esq.
505 Montgomery Street, Suite 2000
San Francisco, CA 94111

Packaging Plus Services, LLC
Packaging Plus, LLC
AG Thermoforming, LLC
14450 Industry Circle
La Mirada, CA 90638

Earthbound Farm
Counsel: Cooley, LLP
Seth A. Rafkin, Esq.
Lindsay P. Parker, Esq.
4401 Eastgate Mall
San Diego, CA 92121

RECEIVED

NOV 18 2013

State of California
Labor & Workforce Development Agency

Letter to Marty Morgenstern, et al.

November 15, 2013

Re: *PAGA Notice on Behalf of Sergio Jacobo, Isaac Mirasol, and Others*

Page 2 of 4

Sustainable Packaging Partners, LLC
Agent for Service: Joseph Rokus
995 Hampton Road
Arcadia, CA 91006

Re: AMENDED PAGA Notice on Behalf of Sergio Jacobo, Isaac Mirasol and all current and former employees

Dear Mr. Morgenstern:

Please consider this a request under Labor Code § 2699.3(a)(1) for the California Labor & Workforce Development Agency ("LWDA" or "Agency") to take action against Packaging Plus Services, LLC, Packaging Plus, LLC and AG Thermoforming, LLC, Peninsula Packaging LLC, Earthbound Farm, and Sustainable Packaging Partners, LLC (referred to collectively as "Defendants"), for violations of the California Labor Code described below. I am writing on behalf of an aggrieved employee represented by this law firm and on behalf of other current and former employees who have been employed and/or managed by Packaging Plus.

Further, please consider this a notice to Defendants and, pursuant to California Labor Code § 558, to any "other person acting on behalf of [Defendants] who violates, or causes to be violated," sections of the California Labor Code governing hours and days of work as described below. On information and belief these agents include the entities listed above, as well as, their managers, supervisors and others who caused the violations.

This investigation request and notice of California Labor Code violations concerns the systematic failure by Defendants to pay its current and former California non-exempt employees in conformance with provisions set out in the California Labor Code and in Wage Orders promulgated by the Industrial Welfare Commission. At the core of Defendants' violations are systematic failures to keep accurate payroll records by requiring their employees to work beyond their scheduled or recorded work time without payment of any wages for said work, refusing to pay overtime premium wages earned, refusing to provide adequate rest and meal periods or to provide them premium wages in lieu thereof, failure to provide accurate wage statements and failure pay all wages owed upon separation from employment.

Liability under the Private Attorneys General Act (Cal. Labor Code §§ 2698 *et seq.*) (hereafter "PAGA") may be based on a wide variety of Labor Code provisions, including §§ 201, 202, 203, 216, 218, 218.6, 223, 225, 226, 226.7, 510, 512, 1174, 1175, 1194, 1194.2, 1197, 1199 and 2673.1(a), among many others. Any violation of these or any other Labor Code provisions serves as the basis for a PAGA claim by an aggrieved employee on behalf of themselves and other current and former employees.

In particular, the violations set forth below relate to individuals employed by Defendants to perform manufacturing work. Further details regarding these violations are set forth in the attached class action complaint. The violations are as follows:

1. Defendants failed to pay our client and other non-exempt employees for all wages earned, including minimum and premium overtime wages, in violation of Cal. Labor Code §§ 201, 202, 221, 1194 and 558, and 8 Cal. Code of Regs. §§ 11010 ("IWC Wage Order 1"), by inaccurately keeping records of actual hours worked and wages earned, by refusing to pay for all hours actually worked, by manipulating electronic time records, and by failing to pay for all hours worked.
2. Defendants failed to provide our client and other non-exempt employees with a rest period of at least ten (10) minutes for every four-hour period worked in violation of Cal. Labor Code §§ 226.7 and 558, and 8 Cal. Code of Regs. §§ 11010(11 & 12).
3. Defendants violated Labor Code §§ 226.7, 512 and 558 by failing to provide our clients and other employees meal periods in accordance with IWC Wage Order 1, since it routinely employed our client and other non-exempt employees for 5 hours, 6 hours or more in a workday without providing a meal period.
4. Defendants have failed to pay employees all wages owed immediately or within 72 hours upon separation from employment in violation of Labor Code §§ 201, 202 and 203, since it systematically failed to pay all premium overtime wages earned and failed to pay all additional wages in lieu of providing all rest and meal periods.
5. Defendants have systematically failed to keep accurate time records and have failed to provide accurate wages statements that reflect the actual hours worked and amounts earned by our client and other employees.

The work addresses of the Packaging Plus entity and individuals are as follows:

Packaging Plus Services, LLC
Packaging Plus, LLC
AG Thermoforming, LLC
14450 Industry Circle
La Miranda, CA 90638

Letter to Marty Morgenstern, et al.

November 15, 2013

Re: *PAGA Notice on Behalf of Sergio Jacobo, Isaac Mirasol, and Others*

Page 4 of 4

Peninsula Packaging, LLC
1030 N Anderson Road
Exeter, CA 93221
Counsel: Latham & Watkins LLP
Jason H. Lee, Esq.
Linda M. Inscoe, Esq.
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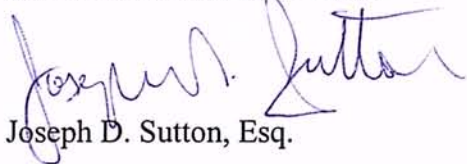
Sustainable Packaging Partners, LLC
Agent for Service: Joseph Rokus
995 Hampton Road
Arcadia, CA 91006

Our clients' names are Sergio Jacobo and Isaac Mirasol. They can be contacted through our office: Mallison & Martinez, Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

If no action is taken within 30 days, we will assume that we may pursue this action against Packaging Plus Services, LLC, Packaging Plus, LLC and AG Thermoforming, LLC, Peninsula Packaging LLC, Earthbound Farm, and Sustainable Packaging Partners, LLC and individuals, pursuant to Labor Code § 2698 *et seq.*

Sincerely,

MALLISON & MARTINEZ



Joseph D. Sutton, Esq.

1 Stan S. Mallison (SBN 184191)
Hector R. Martinez (SBN 206336)
2 Marco A. Palau (SBN 242340)
Joseph D. Sutton (SBN 269951)
3 MALLISON & MARTINEZ
1939 Harrison Street, Suite 730
4 Oakland, CA 94612
Telephone: (510) 832-9999
5 Facsimile: (510) 832-1101

6 Attorneys for PLAINTIFFS

7
8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SAN BENITO
11

12
13 SERGIO JACOBO and ISAAC MIRASOL, on
14 behalf of themselves and all others similarly
situated,

15
16 Plaintiffs,

17 vs.

18 PACKAGING PLUS SERVICES, LLC, a
California corporation, PACKAGING PLUS
19 LLC [Form Unknown], AG
20 THERMOFORMING, LLC, a California
limited liability corporation, PENINSULA
21 PACKAGING LLC, EARTHBOUND FARM
[Form Unknown], SUSTAINABLE
22 PACKAGING PARTNERS, LLC, and DOES
23 1 through 20

24 Defendants.
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Case No. CU-11-00127

CLASS ACTION

**FOURTH AMENDED COMPLAINT
FOR:**

1. Failure to Provide Rest Periods
2. Failure to Provide Meal Periods
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Wages of Terminated
or Resigned Employees
6. Knowing and Intentional Failure to
Comply with Itemized Employee
Wage Statement Provisions
7. Violation of Unfair Competition
Law
8. Enforcement of the California
Labor Code Private Attorney
General Act

DEMAND FOR JURY TRIAL

1 Plaintiffs SERGIO JACOBO ("JACOBO") and ISAAC MIRASOL ("MIRASOL"
2 collectively "PLAINTIFFS") brings this action against PACKAGING PLUS SERVICES, LLC,
3 PACKAGING PLUS, LLC, [FORM UNKNOWN], AG THERMOFORMING, LLC,
4 SUSTAINABLE PACKAGING PARTNERS, LLC, EARTHBOUND FARM [FORM
5 UNKNOWN], PENINSULA PACKAGING, LLC ("PENINSULA") (hereafter collectively
6 "DEFENDANTS") and its subsidiaries or controlled affiliated corporations, partnerships, parent
7 companies, subsidiaries, partners, "dbas", or agents, and allege upon information and belief which
8 is based upon the investigation of his counsel, except as to the allegations concerning
9 PLAINTIFFS or their counsel which are made upon PLAINTIFFS' personal knowledge.
10

11 **I. NATURE OF THE ACTION**

12 1. This is a wage and hour PAGA and class action to vindicate the rights afforded
13 employees under California law. This action is brought on behalf of PLAINTIFFS and former non-
14 exempt California employees of DEFENDANTS from four years prior to the initial Complaint
15 (collectively the "Class Members"). PLAINTIFFS are informed and believe and thereupon allege
16 that DEFENDANTS are corporations or other entities engaged in business in California.
17

18 2. The core of DEFENDANTS' violations revolve around the systematic failure to pay
19 minimum and overtime wages; failure to keep accurate time records; failure to provide lawful meal
20 or rest breaks (or pay the statutory compensation due) in the State of California. For example,
21 PLAINTIFFS allege that DEFENDANTS maintained a practice and policy of requiring workers to
22 "don and doff" protective equipment, requiring workers to subject themselves to de-contamination
23 procedures, and requiring them to walk from the de-contamination site to their workstations, in
24 which class members were suffered and permitted to work off-the-clock resulting in numerous
25 statutory labor violations.
26
27
28

1 3. DEFENDANTS' business practices are not isolated but impact a large number of
2 workers who have worked for, currently work for, and will work for DEFENDANTS in California,
3 and as such, resolution of this issue will have large benefits for workers and the public as a whole.

4 4. In addition, pursuant to the Private Attorney General Act ("PAGA"), Labor Code §
5 2698, et seq., PLAINTIFFS seek penalties for the underlying violations of the Labor Code on
6 behalf of themselves, the State of California and DEFENDANTS' current and former employees.
7 As held by the California Supreme Court in *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, aggrieved
8 employees have a substantive right to act as a proxy or agent of the State of California in seeking
9 penalties for the State and Defendants workforce, and although these aggrieved employees are
10 empowered to do so in a representative fashion, the class action requirements do not apply. As
11 such, for PAGA penalty purposes only, this action is brought on behalf of Defendants' entire past
12 and current workforce and California's Labor & Workforce Development Agency ("LWDA")
13 during the relevant time period covered by the statute of limitations which is one year for most
14 PAGA penalties and three years for Labor Code §§ 256, 203 predicate violations. Plaintiffs have
15 complied with the administrative requirements pursuant to PAGA by mailing notice to the LWDA
16 and the Defendants on October 11, 2011. An amended letter has been sent to the LWDA for the
17 Defendants named since the filing of the original complaint. The LWDA has failed to express the
18 intent to investigate as of the date of this amended complaint – perfecting PLAINTIFFS' right to
19 bring the PAGA cause of action.
20
21
22

23 **II. JURISDICTION AND VENUE**

24 5. This case is subject to the jurisdiction of this Court pursuant to the California Labor
25 Code, California Business and Professions Code, and Code of Civil Procedure. DEFENDANTS
26 are California corporations, businesses, or DBAs doing acts in San Benito County, California.
27 DEFENDANTS are qualified to do business in California and regularly conduct business in San
28 Benito County, California.

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

16 7. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
17 because the County of San Benito is the county in which the majority of the acts occurred
18 including the underlying policy decisions to intentionally violate and permit the violation of the
19 California Labor Code and the California Business and Professions Code. PLAINTIFFS have
20 worked for DEFENDANTS in San Benito County.

21 **III. INTRODUCTION**

22 8. This is a wage and hour PAGA and class action to vindicate the rights afforded to
23 PLAINTIFFS and the CLASS by the California Labor Code and the California Business and
24 Professions Code. PLAINTIFFS and the Class are employed as non-exempt employees for
25 DEFENDANTS within the State of California. The action seeks recovery for wages and
26
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1 compensation due and other related remedies for PLAINTIFFS and Class Members under
2 California laws for the maximum period prior of four years prior to the filing of the original
3 complaint to the present.

4 9. The claims of this lawsuit spring from a pattern of employer misconduct and
5 wrongdoing that is a characteristic of the labor system utilized by DEFENDANTS in California,
6 where unpaid and improperly paid labor, as alleged herein, is a common business practice, and
7 where the employer externalizes the cost of capital expenditures upon DEFENDANTS' employees.
8 DEFENDANTS' actions in this case demonstrate a systematic disregard for the rights afforded to
9 PLAINTIFFS and the Class under California wage and hour law. The following paragraphs detail
10 specific violations of law comprising these wage-related claims.
11

12 10. During the past four years DEFENDANTS consistently maintained and enforced
13 against its non-exempt employees, including PLAINTIFFS, the following unlawful practices and
14 policies, in violation of California wage and hour laws:
15

- 16 a. failing to properly pay PLAINTIFFS and Class Members premium overtime
17 and/or double time wages as defined by California IWC orders;
- 18 b. failing to properly pay PLAINTIFFS and Class Members minimum wages
19 as defined by the California IWC orders;
- 20 c. failing to provide PLAINTIFFS and Class Members, rest periods of at least
21 (10) minutes per four (4) hours worked or major fraction thereof and failing
22 to pay such employees one (1) hour of pay at the employee's regular rate of
23 compensation for each workday that the rest period is not provided;
- 24 d. requiring PLAINTIFFS and Class Members, to work at least five (5) hours
25 without a full and complete meal period and failing to pay such employee
26 one (1) hour of pay at the employee's regular rate of compensation for each
27 workday that the meal period is not provided;
- 28 e. failing to maintain accurate and complete employment records for

1 PLAINTIFFS and Class Members; and

2 f. failing to pay all wages due upon termination.

3 11. Pursuant to the California Labor Code, PLAINTIFFS, on behalf of Class Members,
4 seek unpaid premium overtime wages, minimum wages, unpaid rest and meal period
5 compensation, unpaid contractual wages, statutory penalties, liquidated damages, declaratory,
6 injunctive and other equitable relief, interest, reasonable attorneys' fees, and costs of suit.
7 PLAINTIFFS will also seek in this complaint those penalties that are available only through the
8 procedures detailed in Labor Code § 2698 *et seq.*
9

10 12. Pursuant to Business and Professions Code § 17200 *et seq.*, PLAINTIFFS, on
11 behalf of Class Members, also seek injunctive relief, declaratory relief, restitution, and
12 restitutionary disgorgement of all wages earned but retained by DEFENDANTS as a result of their
13 failure to comply with the above laws.
14

15 13. PLAINTIFFS are also entitled to attorneys' fees and costs pursuant to the private
16 attorney provisions of California Code of Civil Procedure § 1021.5, California Labor Code § 1194,
17 California Labor Code § 2699, as well as other California statutory law.

18 **IV. PARTIES**

19 ***PLAINTIFF SERGIO JACOBO***

20 14. PLAINTIFF SERGIO JACOBO ("JACOBO") is, and at all relevant times, was a
21 resident of California and lived within San Benito County. JACOBO is an "aggrieved employee"
22 pursuant to Labor Code § 2698, *et seq.* as a result of the violations and the harms described herein.
23 At all relevant times herein, JACOBO was employed by DEFENDANTS within San Benito
24 County, California. DEFENDANTS employed JACOBO as a non-exempt employee.
25

26 15. JACOBO started working for DEFENDANTS PACKAGING PLUS SERVICES,
27 LLC, PACKAGING PLUS, LLC, and AG THERMOFORMING, LLC at a their thermoforming
28 plant in Hollister, California at 2401 Bert Drive, Hollister, CA 95023 ("Hollister") beginning in

1 approximately 2007. At Hollister, JACOBO worked as a "Lift Driver" in the Shipping Department.

2 16. In approximately late 2010, JACOBO changed work locations, working for
3 DEFENDANTS PACKAGING PLUS SERVICES, LLC, PACKAGING PLUS, LLC, and AG
4 THERMOFORMING, LLC operation at a thermoforming plant at 1721 San Juan Highway, San
5 Juan Bautista, CA 95045 ("San Juan Bautista") (DEFENDANT EARTHBOUND FARM'S
6 location) as a "Lift Driver" in the Production Department. Once JACOBO's employment shifted
7 from the Hollister to San Juan Bautista plant he alleges he was jointly employed by
8 DEFENDANTS PACKAGING PLUS SERVICES, LLC, PACKAGING PLUS, LLC, AG
9 THERMOFORMING, LLC and EARTHBOUND FARM.
10

11 17. In approximately December 2011, PLAINTIFF alleges on information and belief
12 that DEFENDANT PENINSULA PLUS took over operations from DEFENDANTS
13 PACKAGING PLUS SERVICES, LLC, PACKAGING PLUS, LLC, AG THERMOFORMING,
14 LLC at the San Juan Bautista plant. JACOBO further alleges that from approximately December
15 2011 to April 15, 2013, he was jointly employed by DEFENDANT PENINSULA PLUS and
16 DEFENDANT EARTHBOUND FARM at the San Juan Bautista plant.
17

18 18. On or about April 15, 2013, DEFENDANT SUSTAINABLE PACKAGING
19 PARTNERS ("SUSTAINABLE") took over operations at the San Juan Bautista from
20 DEFENDANT PENINSULA PLUS. JACOBO further alleges that from April 15, 2013 to his
21 termination in approximately May 2013 he was jointly employed by DEFENDANT
22 SUSTAINABLE and EARTHBOUND FARM.
23

24 19. During the relevant time period JACOBO performed services for DEFENDANTS
25 during all or substantially all of the Class Period at hourly and/or bonus rates that varied over his
26 employment. As a non-exempt employee working for DEFENDANTS, JACOBO was regularly
27 subjected to, or had personal knowledge of, the violations described in the Complaint, as he
28 worked at DEFENDANTS' Hollister and San Juan Bautista plant locations. However, many

1 allegations are made upon their attorneys' investigation and are, therefore, made on information
2 and belief.

3 **PLAINTIFF ISAAC MIRASOL**

4 20. PLAINTIFF ISAAC MIRASOL ("MIRASOL") is, and at all relevant times, was a
5 resident of California and lived within San Benito County. MIRASOL is an "aggrieved employee"
6 pursuant to Labor Code § 2698, *et seq.* as a result of the violations and the harms described herein.
7 At all relevant times herein, MIRASOL was employed by DEFENDANTS within San Benito
8 County, California. DEFENDANTS employed MIRASOL as a non-exempt employee.
9

10 21. MIRASOL started working for DEFENDANTS PACKAGING PLUS SERVICES,
11 LLC, PACKAGING PLUS, LLC, and AG THERMOFORMING, LLC at their thermoforming
12 plant in Hollister, California at 2401 Bert Drive, Hollister, CA 95023 in approximately 2008 as a
13 "Maintenance Manager."
14

15 22. In approximately 2011, MIRASOL changed work locations, working for
16 DEFENDANTS PACKAGING PLUS SERVICES, LLC, PACKAGING PLUS, LLC, and AG
17 THERMOFORMING, LLC at 1721 San Juan Highway, San Juan Bautista, CA 95045
18 (DEFENDANT EARTHBOUND FARM'S location). Once MIRASOL'S employment shifted
19 from the Hollister to San Juan Bautista plant he alleges he was jointly employed by
20 DEFENDANTS PACKAGING PLUS SERVICES, LLC, PACKAGING PLUS, LLC, AG
21 THERMOFORMING, LLC and EARTHBOUND FARM.
22

23 23. In approximately December 2011, MIRASOL alleges on information and belief that
24 DEFENDANT PENINSULA PLUS took over operations from DEFENDANTS PACKAGING
25 PLUS SERVICES, LLC, PACKAGING PLUS, LLC, AG THERMOFORMING, LLC at the San
26 Juan Bautista plant. MIRASOL further alleges that from approximately December 2011 to April
27 15, 2013, he was jointly employed by DEFENDANT PENINSULA PLUS and DEFENDANT
28 EARTHBOUND FARM at the San Juan Bautista plant.

1 24. On or about April 15, 2013, DEFENDANT SUSTAINABLE PACKAGING
2 PARTNERS ("SUSTAINABLE") took over operations at the San Juan Bautista from
3 DEFENDANT PENINSULA PLUS. MIRASOL alleges that from April 15, 2013 to his
4 termination in approximately June 2013 he was jointly employed by DEFENDANT
5 SUSTAINABLE and EARTHBOUND FARM. During the relevant time period MIRASOL
6 performed services for DEFENDANTS during all or substantially all of the Class Period at hourly
7 and/or bonus rates that varied over his employment. As a non-exempt employee working for
8 DEFENDANTS, MIRASOL was regularly subjected to, or had personal knowledge of, the
9 violations described in the Complaint, as he worked for DEFENDANTS at the Hollister and San
10 Juan Bautista plants. However, many allegations are made upon their attorneys' investigation and
11 are, therefore, made on information and belief.
12

13 **DEFENDANT PACKAGING PLUS SERVICES, LLC**
14

15 25. PACKAGING PLUS SERVICES, LLC is a nationwide manufacturer. On
16 information and belief, PACKAGING PLUS SERVICES, LLC is a California Corporation
17 headquartered or located at 14450 Industry Circle, La Miranda, CA 90638. A default was entered
18 against PACKAGING PLUS SERVICES, LLC by the Court Clerk on December 11, 2012.
19

20 **DEFENDANT PACKAGING PLUS, LLC**
21

22 26. PACKAGING PLUS, LLC [FORM UNKNOWN and not listed on the California
23 Business Portal] is a nationwide manufacturer. On information and belief, the corporate
24 headquarters of PACKAGING PLUS, LLC is located at 14450 Industry Circle, La Mirada, CA
25 90638. PACKAGING PLUS, LLC owned and operated a thermoforming plant at the following
26 locations at 2401 Bert Drive in Hollister, California at which PLAINTIFFS worked during time
27 relevant to this complaint. On information and belief PLAINTIFFS allege that PACKAGING
28 PLUS, LLC also operated a thermoforming plant on the property of DEFENDANT
EARTHBOUND FARM at 1721 San Juan Highway, San Juan Bautista, CA 95045 at times

1 relevant to the complaint until approximately December 2011. A default was entered against
2 PACKAGING PLUS, LLC by the Court Clerk on December 11, 2012.

3 ***DEFENDANT AG THERMOFORMING, LLC***

4 27. AG THERMOFORMING, LLC is a nationwide manufacturer. On information and
5 belief, AG THERMOFORMING, LLC is a California Corporation headquartered or located at
6 14450 Industry Circle, La Miranda, CA 90638. AG THERMOFORMING, LLC'S agent for service
7 of process is CT Corporation System. A default was entered against AG THERMOFORMING,
8 LLC by the Court Clerk on December 11, 2012.

9 ***DEFENDANT PENINSULA PACKAGING, LLC***

10 28. PENINSULA PACKAGING, LLC ("PENINSULA") is a California Corporation
11 located at 1030 N. Anderson Road, Exeter, California, 93221. The agency for service of process
12 for PENINSULA PACKAGING, LLC is CT Corporation System. PLAINTIFFS allege that
13 PENINSULA owns and operates thermoforming plants at the following locations in California: 1)
14 2401 Bert Drive in Hollister, California; and 2) 1030 N. Anderson Road, Exeter, California, 93221.
15 PENINSULA acquired the thermoforming plant at 2401 Bert Drive in Hollister, California in
16 approximately December 2011 from PACKAGING PLUS, LLC. PLAINTIFFS allege on
17 information and belief that PENINSULA operated a thermoforming plant on the property of
18 DEFENDANT EARTHBOUND FARM at 1721 San Juan Highway, San Juan Bautista, CA 95045
19 from approximately December 2011 to April 15, 2013.

20 29. PLAINTIFFS allege that PENINSULA is liable for the allegations contained herein
21 as PLAINTIFFS and/or Class Members were either employed directly by PENINSULA at the
22 Hollister and/or Exeter plants or jointly employed by PENINSULA and DEFENDANT
23 EARTHBOUND FARM at the San Juan Bautista plant at relevant times herein.

24 30. PLAINTIFFS allege that PENINSULA can also be held liable as a successor in
25 interest to the liabilities of DEFENDANTS PACKAGING PLUS SERVICES, LLC,
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1 PACKAGING PLUS, LLC, and AG THERMOFORMING, LLC for the allegations contained
2 herein occurring at the Hollister and San Juan Bautista plants. PENINSULA is liable as a successor
3 in interest to the liabilities of PACKAGING PLUS SERVICES, LLC, PACKAGING PLUS, LLC,
4 and AG Thermoforming, LLC, as there has been a continuity of operations at both the Hollister
5 plant, which they acquired from PACKAGING PLUS, and the San Juan Bautista plant, where they
6 succeeded PACKAGING PLUS in operating the thermoforming manufacturing. For example, at
7 the Hollister plant PENINSULA still employs largely the same work force with the same
8 supervisory personnel, and the same jobs exist under substantially the same working conditions
9 that existed under PACKAGING PLUS. Further, PENINSULA uses the same machinery,
10 equipment and methods, same customers, and produces the same product. On information and
11 belief, PLAINTIFFS alleged that DEFENDANT PENINSULA PLUS caused the allegations
12 alleged herein.
13
14

15 ***DEFENDANT SUSTAINABLE PACKAGING PARTNERS, LLC***

16 31. SUSTAINABLE PACKAGING PARTNERS, LLC ("SUSTAINABLE") is a
17 California corporation located at 1721b San Juan Highway, San Juan Bautista, California 95945.
18 Its agent for service of process is Joseph Rokus at 995 Hampton Road, Arcadia, CA 91006.
19 PLAINTIFFS allege that beginning in approximately April 2013, SUSTAINABLE took over
20 operations of the thermoforming plant on the property of DEFENDANT EARTHBOUND FARM
21 at 1721 San Juan Highway, San Juan Bautista, CA 95045 from DEFENDANT PENINSULA.
22 PLAINTIFFS further allege that SUSTAINABLE PACKAGING PARTNERS, LLC is liable for
23 the allegations contained herein as PLAINTIFFS and the Class Members were jointly employed by
24 SUSTAINABLE and DEFENDANT EARTHBOUND FARM at the San Juan Bautista plant at
25 relevant times herein.
26

27 32. SUSTAINABLE is liable as a successor in interest to the liabilities of PENINSULA
28 PLUS for the allegations contained herein alleged to have occurred at the San Juan Bautista plant

1 during the times relevant to this complaint, as there has been a continuity of operations there after
2 SUSTAINABLE succeeded PENINSULA PLUS in operating the thermoforming plant at San Juan
3 Bautista. For example, SUSTAINABLE employs largely the same work force with the same
4 supervisory personnel, and the same jobs exist under substantially the same working conditions
5 that existed when DEFENDANT PENINSULA PLUS operated the plant. Further,
6 SUSTAINABLE uses the same machinery, equipment and methods, same customers, and produces
7 the same product. On information and belief, PLAINTIFFS alleged that DEFENDANT
8 SUSTAINABLE PACKAGING PARTNERS caused the allegations alleged herein.
9

10 ***DEFENDANT EARTHBOUND FARM***

11 33. DEFENDANT EARTHBOUND FARM ("EARTHBOUND") employs, directly and
12 jointly, over one thousand workers in and around San Benito County. On information and belief,
13 EARTHBOUND is headquartered at 1721 San Juan Highway, San Juan Bautista, CA 95045.
14 EARTHBOUND appears to have three separate LLC's registered with the State of California:
15 EARTHBOUND FARM HOLDINGS I, LLC; EARTHBOUND FARM HOLDINGS II, LLC; and
16 EARTHBOUND FARM HOLDINGS III, LLC; and potentially others that are related and will be
17 named as DOES after discovery. PLAINTIFFS allege that they were at various times relevant to
18 the Complaint they were jointly employed by EARTHBOUND and PACKAGING PLUS
19 SERVICES, LLC, PACKAGING PLUS, LLC, AG Thermoforming, LLC; EARTHBOUND and
20 PENINSULA PLUS; and EARTHBOUND and SUSTAINABLE at EARTHBOUND'S plant at
21 1721 San Juan Highway, San Juan Bautista, CA.
22
23

24 34. DEFENDANT EARTHBOUND FARM exercises control over the labor practices
25 of the other DEFENDANTS and has jointly employed PLAINTIFFS and the Class Members and
26 caused the violations of all the aggrieved employees at the San Juan Bautista plant. For example,
27 DEFENDANT EARTHBOUND FARM exercised control over the working condition by
28 maintaining supervisors at the San Juan Bautista location who directed and oversaw the work

1 performed by PLAINTIFFS Class Members, including instructing workers on quality issues and
2 protective clothing. PLAINTIFFS further allege on information and belief that EARTHBOUND
3 exercised control over the “donning and doffing” process, which led to many of the violations
4 alleged herein. DEFENDANTS SUSTAINABLE, PENINSULA PLUS, PACKAGING PLUS
5 SERVICES, LLC, PACKAGING PLUS LLC, and AG THERMOFORMING, LLC’S acted and/or
6 act as agents of and/or joint employers with EARTHBOUND and aided and helped cause the
7 violations by EARTHBOUND against PLAINTIFFS and Class Members employed at the San Juan
8 Bautista plant.

10 35. PLAINTIFFS are ignorant as to the true names and capacities of the
11 DEFENDANTS sued under the fictitious names DOES 1 through 20. PLAINTIFFS will seek leave
12 of court to amend this complaint to allege their names and capacities as soon as they are
13 ascertained.

15 36. PLAINTIFFS are informed and believe, and based thereon allege, that
16 DEFENDANTS and its subsidiaries or controlled affiliated corporations, partnerships, parent
17 companies, subsidiaries, partners, “dbas,” or agents carried out a joint scheme, business plan or
18 policy in all respects pertinent hereto, and the acts of these persons are legally attributable to
19 DEFENDANTS.

20 **V. FACTUAL BACKGROUND**

21 37. DEFENDANTS operated and, at all relevant times herein, have conducted business,
22 including the manufacturing of packaging products at the following three manufacturing facilities
23 within California: 1) 2401 Bert Drive in Hollister, California; 2) 1030 N. Anderson Road, Exeter,
24 California, 93221; and 3) 1721 San Juan Highway, San Juan Bautista, CA. On information and
25 belief, DEFENDANTS have employed more than one hundred persons, if not thousands of
26 persons, in the State of California.
27
28

1 38. DEFENDANT EARTHBOUND FARM exercises control over the labor practices
2 of the other DEFENDANTS and has jointly employed PLAINTIFFS and the Class Members at the
3 San Juan Bautista plant and caused the violations of all the aggrieved employees at issue in this
4 Complaint at the San Juan Bautista plants. For example, DEFENDANT EARTHBOUND FARM
5 exercised control over the working condition by maintaining supervisors at the San Juan Bautista
6 location who directed and oversaw the work performed by PLAINTIFFS Class Members,
7 including instructing workers on quality issues and protective clothing, including the “donning and
8 doffing” process which lead to many of the violations alleged herein. DEFENDANTS
9 SUSTAINABLE, PENINSULA PLUS, PACKAGING PLUS SERVICES, LLC, PACKAGING
10 PLUS LLC, and AG THERMOFORMING, LLC’S acted and/or act as agents of and/or joint
11 employers with EARTHBOUND and aided and helped cause the violations by EARTHBOUND
12 against PLAINTIFFS and Class Members employed at the San Juan Bautista plant.
13
14

15 39. On information and belief, PLAINTIFFS allege that during the Class Period
16 DEFENDANTS consistently maintained and enforced against its non-exempt employees, including
17 PLAINTIFFS and Class Members, the following unlawful practices and policies, in violation of
18 California state wage and hour laws:

- 19 a. failing to properly pay PLAINTIFFS and the Class premium overtime wages
20 for all hours worked in excess of 8 hours in one day, 40 hours in a
21 workweek;
- 22 b. failing to properly pay PLAINTIFFS and Class Members minimum wages
23 for all hours worked;
- 24 c. failing to provide PLAINTIFFS and Class Members, rest periods of at least
25 (10) minutes per four (4) hours worked or major fraction thereof and failing
26 to pay such employees one (1) hour of pay at the employee’s regular rate of
27 compensation for each workday that the rest period is not provided. For
28

example, DEFENDANTS failed to provide PLAINTIFFS with a break during the final four hours of their shift.

d. requiring PLAINTIFFS and Class Members, to work at least five (5) hours without a full and complete meal period (or 10 hours without a second full and complete meal period) and failing to pay such employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the proper meal period is not provided. For example, DEFENDANTS failed to give two lunch breaks for shifts lasting longer than 10 hours, and required employees to cut short their meal period to conduct preparation work for their post-meal period shift.

e. failing to maintain accurate and complete employment records for PLAINTIFFS and Class Members;

f. failing to pay all wages due upon termination.

g. failing to provide accurate itemized wage statements;

40. On information and belief, DEFENDANTS were on actual and constructive notice of the improprieties alleged herein by PLAINTIFFS and intentionally refused to rectify their unlawful policies. DEFENDANTS' violations, as alleged above, were knowing, willful and deliberate.

41. DEFENDANTS have made it difficult to account with precision for the wages unlawfully withheld from DEFENDANTS' non-exempt employees, including PLAINTIFFS, during all relevant times herein, because they did not implement and preserve a sufficient record-keeping method to record all hours worked and wages earned by their employees as required for non-exempt employees by California Labor Code §§ 226 and 1174(d).

42. DEFENDANTS have failed to comply with California Labor Code §226(a) by itemizing in wage statements all wages properly earned and accurately reporting total hours

1 worked by PLAINTIFFS and Class Members. PLAINTIFFS and Class Members are therefore
2 entitled to statutory penalties not to exceed \$4,000 pursuant to Labor Code § 226(e).

3 43. On behalf of the State and DEFENDANTS' workforce, PLAINTIFFS seek
4 penalties, and all available relief, arising from the acts and omissions described herein that
5 constitute violations of Labor Code and Wage Order provisions, as set forth under the PAGA and
6 Labor Code § 558. The PAGA claim is asserted against all DEFENDANTS.

7 **VI. CLASS ACTION ALLEGATIONS**

8 44. PLAINTIFFS bring causes of action one through eight on behalf of themselves and
9 all others similarly situated as a class action pursuant to section 382 of the California Code of Civil
10 Procedure to vindicate rights afforded to the Class by California law. PLAINTIFFS seek to
11 represent the following "Classes" composed of and defined as follows:

- 12 a. **HOLLISTER/EXETER PACKAGING PLUS WORKERS:** All
13 non-exempt persons who are employed or have been employed by
14 PACKAGING PLUS SERVICES, LLC, PACKAGING PLUS LLC,
15 and AG THERMOFORMING, LLC at the thermoforming
16 manufacturing plant owned or operated by Packaging Plus at 2401
17 Bert Drive in Hollister, California who, within four (4) years of the
18 filing of the original complaint in this case, have worked as hourly
19 non-exempt employees.
- 20 b. **HOLLISTER/EXETER PENINSULA WORKERS:** All non-
21 exempt persons who are employed or have been employed by
22 DEFENDANT PENINSULA PLUS at the thermoforming
23 manufacturing plants at 2401 Bert Drive in Hollister, California and
24 1030 N. Anderson Road, Exeter, California, 93221 who, within four
25 (4) years of the filing of the original complaint in this case, have
26 worked as hourly non-exempt employees.
- 27 c. **SAN JUAN BAUTISTA WORKERS JOINTLY EMPLOYED**
28 **BY EARTHBOUND/PACKAGING PLUS:** All non-exempt
persons who have been jointly employed by DEFENDANT
EARTHBOUND FARM and PACKAGING PLUS SERVICES,
LLC, PACKAGING PLUS, LLC, AND AG THERMOFORMING,
LLC, at the 1721 San Juan Highway, San Juan Bautista, CA
thermoforming plant who, within four (4) years of the filing of the
original complaint in this case, have worked as hourly non-exempt
employees.
- d. **SAN JUAN BAUTISTA WORKERS JOINTLY EMPLOYED**
BY EARTHBOUND/PENINSULA: All non-exempt persons who
have been jointly employed by DEFENDANT EARTHBOUND
FARM and PENINSULA PLUS at the 1721 San Juan Highway, San
Juan Bautista, CA thermoforming plant who, within four (4) years of
the filing of the original complaint in this case, have worked as

hourly non-exempt employees and were not paid all lawful wages, including regular rate, overtime, rest, and meal period wages.

- e. **SAN JUAN BAUTISTA WORKERS JOINTLY EMPLOYED BY EARTHBOUND/SUSTAINABLE:** All non-exempt persons who are or have been jointly employed by DEFENDANT EARTHBOUND FARM and SUSTAINABLE PACKAGING PARTNERS at the 1721 San Juan Highway, San Juan Bautista, CA thermoforming plant who, within four (4) years of the filing of the original complaint in this case, have worked as hourly non-exempt employees.

PLAINTIFFS reserve their right to amend or modify the class descriptions with greater specificity to further divide into subclasses or to limit to particular issues.

45. This action may properly be maintained as a class action under the provisions of section 382 of the California Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable by means of DEFENDANTS' records.

A. Numerosity

46. The potential members of the Classes as defined are so numerous that joinder of all the Class Members is impracticable. While the precise number of Class Members has not been determined at this time, PLAINTIFFS are informed and believe that the proposed classes consist of approximately hundreds, perhaps even more than one thousand workers. Upon information and belief, PLAINTIFFS allege that DEFENDANTS' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed classes is not practicable.

B. Commonality

47. There are questions of law and fact common to the proposed classes predominating over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- a. whether DEFENDANTS failed to pay overtime wages;
- b. Whether DEFENDANTS violated the California Labor Code and Wage Orders by compensating PLAINTIFFS and Class Members at hourly wage rates below the minimum wage rate;

- 1 c. whether DEFENDANTS failed to permit rest periods of at least (10) minutes
2 for shifts of 3.5 hours in length or more, two rest periods for shifts of greater
3 than 6 hours, and/or 3 rest periods for shifts of greater than 10 hours and
4 failing to pay such employees one (1) hour of pay at the employee's regular
5 rate of compensation for each workday that the rest period was not provided;
6 d. whether DEFENDANTS failed to provide a full and complete timely meal
7 period during each period of five (5) hour work completed and two meal
8 periods for shifts greater than 10 hours, and failed to pay such employee one
9 (1) hour of pay at the employee's regular rate of compensation for each
10 workday that the meal period was not provided;
11 e. whether DEFENDANTS failed to maintain accurate and complete
12 employment records for PLAINTIFFS and the Class Members;
13 f. whether DEFENDANTS failed to pay all wages due upon termination.
14 g. whether DEFENDANTS failed to provide accurate itemized wage
15 statements;
16 h. whether DEFENDANTS failed to maintain accurate time-keeping records;
17 i. whether DEFENDANTS committed unlawful business practices in violation
18 of §§ 17200 *et seq.* of the Business and Professions Code by the above
19 practices and other violations of the California Labor Code.
20 j. whether DEFENDANTS committed unfair business practices in violation of
21 §§ 17200 *et seq.* of the Business and Professions Code by violating the
22 public policies underlying the California Labor Code and/or wage orders.
23 k. whether PLAINTIFFS and the other Class members are entitled to damages,
24 liquidated damages, wages, premium wages, restitution, statutory penalties,
25 injunctive and declaratory relief, punitive or exemplary damages, attorney's
26 fees and costs, and other relief pursuant the California Labor Code and wage
27 orders, and Business and Professions Code §§ 17200 *et seq.*

28 **C. Typicality**

1 48. The claims of the named PLAINTIFFS are typical of the claims of Class Members
2 because the violations were based upon common policies of the DEFENDANTS. PLAINTIFFS
3 and Class Members sustained injuries and damages arising out of and caused by DEFENDANTS'
4 common course of conduct in violation of California laws, regulations, and statutes as alleged
5 herein.

6 **D. Adequacy of Representation**

7 49. PLAINTIFFS will fairly and adequately represent and protect the interests of the
8 Class Members and have no adverse interests in the litigation. Counsel who represent
9 PLAINTIFFS are competent and experienced in litigating employment class actions.

10 **E. Superiority of Class Action**

11 50. A class action is superior to other available means for the fair and efficient
12 adjudication for causes of action one through eight (and in the alternative cause of action nine).
13 Individual joinder of all Class Members is not practicable, and questions of law and fact common
14 to the classes predominate over any questions affecting only individual Class Members. Each Class
15 Member has been damaged and is entitled to recovery by reason of DEFENDANTS' unlawful
16 policy and/or practice of failing to compensate Class Members for all wages earned and due and
17 engaging in the other unlawful practices herein complained of.

18 51. Class action treatment will allow those similarly situated persons to litigate their
19 claims in the manner that is most efficient and economical for the parties and the judicial system.
20 PLAINTIFFS are unaware of any difficulties that are likely to be encountered in the management
21 of this action that would preclude its maintenance as a class action.

22 **VII. PAGA ALLEGATIONS**

23 52. PLAINTIFFS bring this action on behalf of themselves, the State and all other
24 current and former employees of DEFENDANTS, pursuant to California's Private Attorney
25 General Act.

26 53. PLAINTIFFS are aggrieved within the meaning of California Labor Code § 2699,
27 because they were employed by the DEFENDANTS, the alleged violators, and have suffered one
28 or more of the violations alleged herein.

1 54. PLAINTIFFS seeks PAGA penalties for themselves, the State, and PAGA wages
2 pursuant to §558 and §1197.1 for current and former employees of DEFENDANTS for violations
3 of all pertinent provisions of the Labor Code and Wage Orders, including those predicates listed in
4 California Labor Code §2699.5 and those enumerated throughout this complaint with regard to
5 PLAINTIFF or the workforce and

6 55. Although acting in a representative capacity on behalf of DEFENDANTS'
7 workforce, PLAINTIFFS may pursue PAGA penalties for the workforce and need not satisfy any
8 class certification requirements, as set forth in *Arias v. Sup. Ct.*, (2009) 46 Cal.4th 969.
9 PLAINTIFFS have satisfied and/or will satisfy the PAGA requirements necessary to satisfy the
10 administrative requirements.

11 **VIII. CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION**
14 **IN LIEU THEREOF**

15 (CALIFORNIA LABOR CODE §§ 226.7, 512 AND IWC WAGE ORDER 1)

16 56. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein,
17 and bring this claim against all DEFENDANTS.

18 57. California Labor Code § 226.7 states:

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

21 (b) If an employer fails to provide an employee a meal period or rest period in
22 accordance with an applicable order of the Industrial Welfare Commission, the
23 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.

24 58. IWC Wage Order 1 states with regards to breaks:

25 (A) Every employer shall authorize and permit all employees to take rest periods,
26 which insofar as practicable shall be in the middle of each work period. The
27 authorized rest period time shall be based on the total hours worked daily at the rate
28 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

1 time is less than three and one-half (3 1/2) hours. Authorized rest period time shall
2 be counted, as hours worked, for which there shall be no deduction from wages.

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

7 59. On information and belief, during the rest period liability period, DEFENDANTS
8 did not authorize or permit PLAINTIFFS and Class Members to take all full, timely, lawful rest
9 periods.

10 60. DEFENDANTS violated California Labor code § 226.7 by failing to provide
11 PLAINTIFFS and Class Members with all proper and lawful rest periods mandated by Labor Code
12 § 226.7 and Wage Order at plant locations in Hollister, San Juan Bautista and Exeter, California.
13 For example, PLAINTIFFS allege that at the San Juan Bautista plant they were not provided with a
14 full ten-minute rest break as they were required to clock out, take off their protective clothing
15 (which included a smock, hair net, protective glasses and helmet) and then walk to the break area.
16 Upon return from break and prior to clocking back in, PLAINTIFFS allege they were required to
17 leave the break area and walk back to the de-contamination area. Once there, PLAINTIFFS were
18 required to wash their hands and shoes, put their protective clothing back on. Following this
19 decontamination Plaintiffs had to back to the worksite and then clock in. This process resulted in
20 PLAINTIFFSS receiving substantially less than the mandated 10-minute rest period. This one
21 example of the manner in which PLAINTIFFS and Class Members were not permitted lawful ten-
22 minute rest breaks.

23 61. In addition, DEFENDANTS violated California Labor code § 226.7 and Wage
24 Order 1 by failing to provide PLAINTIFFS and Class Members with a third rest break for shifts
25 greater than ten hours.

26 62. PLAINTIFFS and Class Members further allege that DEFENDANTS erred by
27 failing to provide one hour pay at the employees' regular rate of compensation for each work day
28

1 that the rest period was not lawfully provided and one hour pay at the employees' regular rate of
2 compensation for each work day that the rest period is not provided.

3 63. PLAINTIFFS and Class Members did not voluntarily or willfully waive rest
4 periods. Any express or implied waivers obtained from PLAINTIFFS and Class Members were not
5 willfully obtained, were not voluntarily agreed to, and was an unlawful condition of employment
6 or part of a contract of an unlawful adhesion.
7

8 64. By their failure to provide a second rest periods for days on which non-exempt
9 employees work(ed) work periods in excess of 6-hours, third rest periods for shifts in excess ten
10 hours, and failing to provide compensation for such unprovided rest periods DEFENDANTS
11 willfully violated Labor Code § 226.7.
12

13 65. By failing to keep adequate time records required by sections 226 and 1174(d) of
14 the Labor Code, DEFENDANTS have injured PLAINTIFFS and Class Members and made it
15 difficult to calculate the unpaid rest period compensation due PLAINTIFF and Class Members.
16

17 66. As a result of the unlawful acts of DEFENDANTS, PLAINTIFFS and Class
18 Members have been deprived of premium wages in amounts to be determined at trial, and are
19 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
20 under Labor Code §§ 203, 226, 226.7, and 1194.
21

22 67. WHEREFORE, PLAINTIFFS and Class Members request relief as described herein
23 and below.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION 26 IN LIEU THEREOF**

27 (CALIFORNIA LABOR CODE §§ 226.7, 512, AND WAGE ORDER 1)

28 68. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein,
and bring this claim against all DEFENDANTS.

69. California Labor Code § 226.7 states:

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

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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.

70. The applicable wage order issued by the Industrial Welfare Commission is Wage Order 1. Wage Order 1 states with regards to 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 employee. 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.

(B) 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.

A similar provision is contained at California Labor Code § 512.

Any perceived ambiguity regarding the timing of meal breaks was clarified by the California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. The *Brinker* court held that for employees working at a shift of at least six hours, it is unlawful to provide a meal period at a time that is more than five hours after the start of the shift. *Id.* at 1040. In addition, *Brinker* provided that a second meal period must be provided after 10 hours. *Id.* at 1049.

71. In this case, there was no mutual waiver of meal period and employees worked for periods of more than five hours without a meal period of 30-minutes or periods of more than ten

1 hours without a second meal period of 30-minutes. DEFENDANTS violated California Labor
2 Code § 226.7 by failing to provide meal periods mandated by Labor Code § 226.7 and Wage Order
3 1. As such, DEFENDANTS are liable for one hour of pay at the employee's regular rate of
4 compensation for each workday that the meal periods were not provided.

5
6 72. On information and belief, during the meal period liability period, DEFENDANTS
7 did not authorize or permit PLAINTIFFS and Class Members to take timely meal periods within
8 five hours of starting their shifts for shifts of six hours or greater.

9 74. On information and belief, during the meal period liability period, DEFENDANTS
10 did not authorize or permit PLAINTIFFS and Class Members to take a second meal period for
11 shifts greater than ten-hours.

12 75. On information and belief, during the meal period liability period, DEFENDANTS
13 did not authorize or permit PLAINTIFF and Class Members to lawful meal periods at all plant
14 locations noted herein. For example, PLAINTIFFS allege at both the Hollister and San Juan
15 Bautista plants that were not provided with a full thirty-minute meal period within the first five
16 hours of their shifts for shifts greater than six hours. Further, at the same locations, PLAINTIFFS
17 allege that they were not provided with a second thirty-minute meal period for shifts greater than
18 ten hours. In this way, PLAINTIFFS and Class Members were not permitted lawful thirty-minute
19 meal periods.
20

21
22 76. As noted above DEFENDANTS violated California Labor code § 226.7 by failing
23 to provide proper meal periods mandated by Labor Code § 226.7 and Wage Order 1, and by failing
24 to provide one hour pay at the employees' regular rate of compensation for each work day that the
25 meal period was not provided.

26 77. PLAINTIFFS and Class Members did not voluntarily or willfully waive meal
27 periods. Any express or implied waivers obtained from PLAINTIFFS and/or Class Members were
28

1 not willfully obtained, was not voluntarily agreed to, and was an unlawful condition of
2 employment or part of a contract of an unlawful adhesion.

3 78. By their failure to provide lawful meal periods and by failing to provide
4 compensation for such un-provided meal periods DEFENDANTS willfully violated Labor Code §§
5 226.7 & 512.

6
7 79. By failing to keep adequate time records required by Labor Code sections 226 and
8 1174(d), DEFENDANTS have injured PLAINTIFFS and Class Members and made it difficult to
9 calculate the unpaid meal period compensation due PLAINTIFFS and Class Members.

10 80. As a result of the unlawful acts of DEFENDANTS, PLAINTIFFS and Class have
11 Members have been deprived of premium wages in amounts to be determined at trial, and are
12 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
13 under Labor Code §§ 203, 226, 226.7, and 1194.

14
15 81. WHEREFORE, PLAINTIFFS and Class Members request relief as described herein
16 and below.

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION**

19 (CALIFORNIA LABOR CODE §§ 510, 1194 AND 1194.2)

20 82. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein,
21 and bring this claim against all DEFENDANTS.

22
23 83. California Labor Code § 510(a) states:

24 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
25 one workday and any work in excess of 40 hours in any one work week and the first
26 eight hours worked on the seventh day of work in any one workweek shall be
27 compensated at the rate of no less than one and one-half times the regular rate of
28 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.

1 See also California Labor Code § 1185; Industrial Welfare Commission Wage Order 1. California
2 Labor Code § 500 defines, "Workday" and "Day" to mean any consecutive 24 hour period
3 commencing at the same time each calendar day, and defines "workweek" and "week" to mean
4 "any seven consecutive days starting with the same calendar day each week."

5
6 84. As described herein, DEFENDANTS violated California Labor Code § 510 and
7 Wage Order 1 by employing PLAINTIFFS and Class Members in excess of 8 hours in one day, 40
8 hours in a workweek, and on the seventh day of a workweek without overtime pay.
9 DEFENDANTS also violated California Labor Code § 510 and Wage Order 1 by employing
10 PLAINTIFFS and the Class Member greater than 8 hours on the seventh day of work and in excess
11 of 12 hours in a day without pay twice the regular rate of pay for the employee.

12
13 85. On information and belief, PLAINTIFFS allege that DEFENDANTS' practice and
14 policy of requiring workers to put on and take off protective clothing while not "on-the-clock"
15 regularly resulted in overtime pay provisions of Labor Code § 510 and Wage Order 1 at all plant
16 locations noted herein. For example, PLAINTIFFS allege that once inside DEFENDANTS' plant
17 at San Juan Bautista it took a several minutes to arrive at the location for donning the protective
18 gear required for their jobs. PLAINTIFFS protective clothing included a white smock, hair net,
19 helmet and protective glasses. Donning this protective equipment also took several minutes. In
20 addition, PLAINTIFFS were required to thoroughly wash their hands and disinfect their shoes, also
21 taking additional time. Following the decontamination process, PLAINTIFFS then walked for an
22 additional several minutes to the location where they clocked in. Once PLAINTIFFS completed
23 their shifts, they clocked out and walked to the appropriate area to take off their protective
24 clothing, adding more time that was unpaid yet under the control of DEFENDANTS. This is one
25 example of the manner in which PLAINTIFFS and Class Members were not paid for all hours
26 worked resulting in DEFENDANTS' failure to compensate PLAINTIFFS for overtime hours
27 worked at their applicable overtime rates.
28

1
2 86. PLAINTIFFS and Class Members may enforce these provision pursuant to Labor
3 Code § 1194(a) and Business and Professions Code § 17200 et seq.

4 California Labor Code § 1194(a) states:

5
6 Notwithstanding any agreement to work for a lesser wage, any employee receiving
7 less than the legal minimum wage or the legal overtime compensation applicable to
8 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.

9 87. As a result, PLAINTIFFS and Class Members are entitled to the unpaid balance of
10 the full amount of the above noted overtime compensation, interest, reasonable attorney's fees and
11 costs of suit.

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGE**

14 (CALIFORNIA LABOR CODE §§ 1197, 1194(A), 1194.2, WAGE ORDER 1)

15 88. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein,
16 and bring this claim against all DEFENDANTS.

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

18
19 The minimum wage for employees fixed by the commission is the minimum wage
20 to be paid to employees, and the payment of a less wage than the minimum so fixed
is unlawful.

21 90. The applicable minimum wages fixed by the commission for manufacturing
22 workers is found in IWC Wage Order 1 (prior to recent amendment), which states:

23
24 Every employer shall pay to each employee wages not less than seven dollars and
25 fifty cents (\$7.50) per hour for all hours worked, effective January 1, 2007, and not
less than eight dollars (\$8.00) per hour for all hours worked, effective January 1,
2008...

26 91. As described above, DEFENDANTS failed to pay minimum wage "for all hours
27 worked." This violation of California minimum wage law was substantial, non-trivial, and
28 occurred on a daily basis by DEFENDANTS.

1 92. On information and belief, PLAINTIFFS allege that DEFENDANTS' practice and
2 policy of requiring workers to put on and take off protective clothing while not "on-the-clock"
3 regularly resulted in minimum wage violations at all plant locations noted herein. For example,
4 PLAINTIFFS allege that once inside DEFENDANTS' plant at San Juan Bautista it took a several
5 minutes to arrive at the location for donning the protective gear required for their jobs. For
6 PLAINTIFFS protective clothing included a white smock, hair net, helmet and protective glasses.
7 Donning this protective equipment also took several minutes. In addition, PLAINTIFFS were
8 required to thoroughly wash their hands and disinfect their shoes, also taking additional time.
9 Following the decontamination process, PLAINTIFFS then walked for an additional several
10 minutes to the location where they clocked in. Once PLAINTIFFS completed their shifts, they
11 clocked out and walked to the appropriate area to take off their protective clothing, adding more
12 time that was unpaid yet under the control of DEFENDANTS. This is one example of the manner
13 in which PLAINTIFFS and Class Members were not paid for all hours worked resulting in
14 DEFENDANTS' failure to compensate at the minimum wage for all hours worked.
15

17 93. DEFENDANTS have the ability to pay minimum wages for all time worked and
18 have willfully refused to pay such wages with the intent to secure for DEFENDANTS a discount
19 upon this indebtedness with the intent to annoy harass, oppress, hinder delay or defraud
20 PLAINTIFFS and Class Members and has therefore violated California Labor Code § 226(a). As a
21 result of DEFENDANTS' violations of the minimum wage by failing to record and pay minimum
22 wage for all hours worked, DEFENDANTS violated California Labor Code § 226(a) by
23 inaccurately stating gross wages earned, total hours work, deductions, net wages and other issues
24 as described above.
25

26 94. As a result of DEFENDANTS' violations of the minimum wage by failing to record
27 and pay minimum wages for all hours worked, DEFENDANTS violated California Labor Code
28 §226.

1 95. California Labor Code § 226.6 states:

2 Any employer who knowingly and intentionally violates the provisions of Section
3 226 or 226.2, or any officer, agent, employee, fiduciary, or other person who has the
4 control, receipt, custody, or disposal of, or pays, the wages due any employee, and
5 who knowingly and intentionally participates or aids in the violation of any
6 provision of Section 226 or 226.2 is guilty of a misdemeanor and, upon conviction
 thereof, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned
 not to exceed one year, or both, at the discretion of the court. That fine or
 imprisonment, or both, shall be in addition to any other penalty provided by law.

7 As a result, DEFENDANTS' violation of § 226 also constitutes, pursuant to § 226.6, a
8 misdemeanor, is unlawful and unfair, and constitutes a predicate violation of California Business &
9 Profession Code § 17200 as described below.

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

12 Notwithstanding any agreement to work for a lesser wage, any employee receiving
13 less than the legal minimum wage or the legal overtime compensation applicable to
14 the employee is entitled to recover in a civil action the unpaid balance of the full
15 amount of this minimum wage or overtime compensation, including interest
 thereon, reasonable attorney's fees and costs of suit.

16 97. As such, PLAINTIFFS and Class Members may bring this action for minimum
17 wage, interest, costs of suit, and attorney's fees pursuant to California Labor Code § 1194(a).

18 98. As described, in California Labor Code § 1194.2, any such action incorporates the
19 applicable wage order of the California Labor Commission. California Labor Code § 1194.2 states:

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

24 99. As described herein, this is an action under California Labor Code § 1194 to recover
25 wages because of the payment of a wage less than the minimum wages as described in California
26 Labor Code §§ 1197, 1194(a), and 1194.2 and any applicable wage order including IWC Order 1.
27 Therefore, PLAINTIFFS and Class Members are also entitled to recover liquidated damages in an
28 amount equal to the wages unlawfully unpaid and interest thereon.

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FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGE DUE AT TERMINATION

(CALIFORNIA LABOR CODE §§ 201, 202, 203)

100. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein, and bring this claim against all DEFENDANTS.

101. California Labor Code Section 201 states:

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

California Labor Code Section 202 states:

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...

102. DEFENDANTS required PLAINTIFFS and Class Members to work at rates below the minimum wage; failed to pay overtime premium wages; failed to provide PLAINTIFFS and Class Members with rest periods of at least (10) minutes per four (4) hours worked or major fraction thereof and failed to pay such non-exempt employee one (1) hour of pay at the non-exempt employee's regular rate of compensation for each workday that the rest period is not provided, as required by California state wage and hour laws; required PLAINTIFFS to work at least five (5) hours without a meal period, or ten (10) hours without a second meal period, and failed to pay such non-exempt employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided, as required by California state wage and hour laws as described in this complaint, and as a result at termination, DEFENDANTS violated California Labor Code §§ 201 and/or 202 by failing to pay all wages due and payable.

103. California Labor Code § 203 states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any 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

1 commenced; but the wages shall not continue for more than 30 days. An employee
2 who secretes or absents himself or herself to avoid payment to him or her, or who
3 refuses to receive the payment when fully tendered to him or her, including any
4 penalty then accrued under this section, is not entitled to any benefit under this
5 section for the time during which he or she so avoids payment. Suit may be filed for
6 these penalties at any time before the expiration of the statute of limitations on an
7 action for the wages from which the penalties arise.

8 104. As noted above, DEFENDANTS violated California Labor code § 201 by failing to
9 pay PLAINTIFFS and Class Members all of the wages due pursuant to the timelines provided in
10 those sections. DEFENDANTS willfully failed to pay all wages due, as the failure to pay was not
11 inadvertent or accidental. As a result, PLAINTIFFS and Class Members are entitled to 30 days
12 wages. "30 days wages" is calculated pursuant to California case law as 30 working days and not
13 merely a month's wages. See *Mamika v. Barca* (1998) 69 Cal.App.4th 487, 492-493.

14 105. In calculating 30 days wages pursuant to California Labor Code § 203, PLAINTIFF
15 and Class Members are entitled to compensation for all forms of wages earned (even if not
16 properly paid), including, but not limited to, compensation for un-provided rest periods and un-
17 provided meal periods, compensation for work done at hourly rates below the minimum and
18 overtime wages, and other compensation due but not received.

19 106. More than 30 working days have passed since PLAINTIFFS and many Class
20 Members have has left DEFENDANTS' employ, and despite this, they has not received payment
21 pursuant to Labor Code § 203. As a consequence of DEFENDANTS' willful conduct in not
22 paying all earned wages, PLAINTIFFS and Class Members are entitled to 30 day's wages as a
23 penalty under Labor Code § 203 for failure to pay legal wages.

24 107. WHEREFORE, PLAINTIFFS and Class Members seek the relief as described
25 herein and below.

SIXTH CAUSE OF ACTION

**KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS**

(CALIFORNIA LABOR CODE §§ 226, 1174, 1175)

108. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein,
and bring this claim against all DEFENDANTS.

109. California Labor Code Section 226(a) states:

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

i) gross wages earned,

ii) 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,

iii) the number of piece-rate units earned and any applicable piece rate if the
employee is paid on a piece-rate basis,

iv) all deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item,

v) net wages earned,

vi) the inclusive dates of the period for which the employee is paid,

vii) 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,

viii) the name and address of the legal entity that is the employer, and

ix) all applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate by the employee. The
deductions made from payments of wages shall be recorded in ink or other indelible
form, properly dated, showing the month, day, and year, and a copy of the statement
or a record of the deductions shall be kept on file by the employer for at least three
years at the place of employment or at a central location within the State of
California.

110. DEFENDANTS failed to provide "accurate itemized statements" to PLAINTIFFS and Class Members because the wage statements:

- a. Falsely understated the gross wages earned by failing to pay for all hours worked;
- b. Omitted or falsely understated the total hours worked by PLAINTIFFS by reporting or ignoring the total of hours actually worked;
- c. Falsely understated the "number of hours worked at each hourly rate;" and
- d. Falsely stated the net wages earned.

111. California Labor Code § 226(e) and (g) provides for the remedy for the violations described in above:

(e) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

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

112. Section 1174 of the California Labor Code, and Section 7 of Wage Order 1, requires DEFENDANTS to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed, payroll records showing the hours worked daily by and the wages paid to its employees. DEFENDANTS have created a uniform practice of knowingly and intentionally failing to comply with Labor Code § 1174. DEFENDANTS' failure to comply with Labor Code §1174 is unlawful pursuant to Labor Code § 1175. When an employer fails to keep such records, employees may establish the hours worked solely by their testimony and the burden of overcoming such testimony shifts to the employer. *Hernandez v. Mendoza*, 199 Cal. App. 3d 721 (1988).

113. On information and belief, PLAINTIFFS allege that DEFENDANTS' practice and policy of requiring Plaintiffs and Class Members to put on and take off protective gear and clothing

1 while "off-the-clock" results in falsely understated recording of their work hours and thus
2 violations in of Labor Code § 226(a) at all plant facilities noted herein.

3 114. By failing to keep adequate time records required by §§ 226 and 1174(d) of the
4 Labor Code, DEFENDANTS have injured PLAINTIFFS and Class Members and made it difficult
5 to calculate the unpaid rest and meal period compensation due and PLAINTIFFS and Class
6 Members are entitled to up to \$4,000.00 in penalties.

7
8 115. WHEREFORE, PLAINTIFFS requests relief as described herein and below on
9 behalf of Class Members.

10 **SEVENTH CAUSE OF ACTION**

11 **VIOLATION OF UNFAIR COMPETITION LAW**

12 (BUS. & PROF. Code § 17200 *et seq.*)

13 116. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein,
14 and bring this claim against all DEFENDANTS.

15
16 117. On information and belief, by their policies described above, DEFENDANTS
17 engaged in unlawful activity prohibited by Business and Professions Code § 17200 *et seq.* The
18 actions of DEFENDANTS as alleged within this Complaint, constitute false, fraudulent, unlawful,
19 unfair, fraudulent and deceptive business practices, within the meaning of Business and
20 Professions Code §§ 17200 *et seq.* As described herein, PLAINTIFFS and Class Members have
21 suffered injury in fact and have lost money or property as a result of DEFENDANTS violation of
22 §§17200 *et seq.* and the underlying violations as described in this complaint.

23
24 118. PLAINTIFFS and Class Members are entitled to injunctive and other equitable
25 relief against such unlawful practices in order to prevent future damage, for which there is no
26 adequate remedy at law, and to avoid a multiplicity of lawsuits.

27 119. As a direct and proximate result of the unfair business practices of DEFENDANTS,
28 PLAINTIFFS are entitled to equitable and injunctive relief, including full restitution and/or

1 disgorgement of all wages which have been unlawfully withheld from PLAINTIFFS as a result of
2 the business acts and practices described herein and enjoining DEFENDANTS to cease and desist
3 from engaging in the practices described herein.

4 120. The unlawful conduct alleged herein is continuing, and there is no indication that
5 DEFENDANTS will not continue such activity into the future. PLAINTIFFS allege that if
6 DEFENDANTS are not enjoined from the conduct set forth in this Complaint, DEFENDANTS
7 will continue to unlawfully require DEFENDANTS' non-exempt employees to work without
8 adequate minimum and overtime compensation, will continue to fail to provide lawful meal and
9 rest periods, or provide appropriate compensation in lieu thereof, and will continue to fail to pay
10 and to avoid paying appropriate taxes, insurance, and unemployment withholdings.

11 121. PLAINTIFFS further request that the court issue a preliminary and permanent
12 injunction prohibiting DEFENDANTS from requiring non-exempt employees to work below
13 minimum and required overtime premium rates, prohibiting other wrongful conduct which is the
14 subject of this Complaint and which may later be discovered in the course of litigation, enjoining
15 DEFENDANTS from continuing to fail to provide rest periods and meal periods or provide
16 appropriate compensation in lieu thereof.

17 122. WHEREFORE, PLAINTIFFS seek to represent request relief as described herein
18 and below.

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21 **EIGHTH CAUSE OF ACTION**

22
23 **VIOLATION OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEY GENERAL ACT**

24 (CALIFORNIA LABOR CODE §§ 2699 *et seq.* & Predicate Acts)

25 PLAINTIFF ON BEHALF OF THE STATE OF CALIFORNIA, HIMSELF, CURRENT
26 AND FORMER EMPLOYEES
27

1 123. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein,
2 and bring this claim against all DEFENDANTS.

3 124. PLAINTIFFS submit this claim to include allegations pursuant to Labor Code
4 §§ 2698 et seq. (The Private Attorneys General Act). PLAINTIFFS have complied with all of the
5 administrative requirements listed in Labor Code § 2699.3, by giving notice to DEFENDANTS
6 and the Labor & Workforce Development Agency ("LWDA") of the violations alleged herein and
7 the theories and facts supporting those allegations, and by the LWDA's failure to provide a
8 response to PLAINTIFFS' notice within the time provided for by Labor Code § 2699.3.
9

10 125. PLAINTIFFS are aggrieved employees as defined in Labor Code §2699(a).
11 PLAINTIFFS bring this cause on behalf of the State of California, himself and other current or
12 former employees affected by the labor law violations alleged in this complaint. PLAINTIFFS
13 have a substantive right, pursuant to the California Labor Code, to act as the agent or proxy of the
14 State of California to enforce the labor laws and collect penalties for the State and workers;
15 although acting in a representative capacity on behalf of current and former employees, the class
16 certification requirements are not applicable, since PLAINTIFFS have satisfied, or are in the
17 process of satisfying the administrative requirements under PAGA, thus perfecting their status as
18 representatives of the DEFENDANTS' workforce. *Arias v. Superior Court*, 46 Cal.4th 969 (2009).
19

20 126. PLAINTIFFS seek penalties for the State, himself and current or former employees
21 for violations of the Labor Code that provide for penalties pursuant to Labor Code § 2699(a).
22 These predicate violations are listed at Labor Code §2699.5. The myriad penalties associated with
23 the predicate violations are described throughout the labor code. PLAINTIFFS also seek penalties
24 for violations of Labor Code provisions that do not provide a penalty pursuant to Labor Code
25 § 2699(f), which provides:

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

1 violation and two hundred dollars (\$200) for each aggrieved employee per
2 pay period for each subsequent violation.

3 PLAINTIFFS also seeks civil penalties and wages as provided under applicable Labor
4 Code sections for violations of the Labor Code alleged herein, including the predicate violations of
5 § 2699.5 and their associated penalties. The penalties include Labor Code §§ 203, 226, 226.3,
6 1197.1, 558, and Wage Order 1. PLAINTIFFS are also entitled to an award of attorneys' fees and
7 costs as set forth below.

8 127. The PAGA claims are also brought against DEFENDANTS pursuant to provisions
9 of the Labor Code, including § 558 and Wage Order 1, that provide for liability of persons who
10 violate or cause to be violated Labor Code and IWC regulations. California Labor Code Section
11 2699 ("PAGA") states that:

12 Notwithstanding any other provision of law, any provision of this code that
13 provides for a civil penalty to be assessed and collected by the Labor and
14 Workforce Development Agency or any of its departments, divisions,
15 commissions, boards, agencies, or employees, for a violation of this code,
16 may, as an alternative, be recovered through a civil action brought by an
17 aggrieved employee on behalf of himself or herself and other current or
18 former employees...

19 Any provision providing a penalty can be enforced through PAGA. One such provision is Labor
20 Code § 558, which states:

21 (a) Any employer **or other person** acting on behalf of an employer who
22 violates, or causes to be violated, a section of this chapter or any provision
23 regulating hours and days of work in any order of the Industrial Welfare
24 Commission shall be subject to a civil penalty as follows:

25 (1) For any initial violation, fifty dollars (\$50) for each underpaid
26 employee for each pay period for which the employee was underpaid in
27 addition to any amount sufficient to recover underpaid wages.

28 (2) For each subsequent violation, one hundred dollars (\$100) for each
underpaid employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages....

128. The viability of holding persons liable by this method was discussed by the
California Supreme Court in *Reynolds v. Bement*, 36 Cal.4th 1075 (2005) where the court noted
that liability against non-employers could be obtained through the use of PAGA and §558:

Imposition of individual civil liability under the IWC employer definition is
not the only means by which an employee can seek recovery against a
corporate agent. "The Berman hearing procedure is designed to provide a

1 speedy, informal, and affordable method of resolving wage claims” (*Cuadra*
2 *v. Millan, supra*, 17 Cal.4th at p. 858, 72 Cal.Rptr.2d 687, 952 P.2d 704),
3 and, as defendants concede, nothing in that process precludes hearing
4 officers from finding individual corporate agents liable for unpaid wages
5 when such liability is proven on established common law or statutory
6 theories. **Moreover, pursuant to section 558, subdivision (a), any “person**
7 **acting on behalf of an employer who violates, or causes to be violated” a**
8 **statute or wage order relating to working hours is subject to a civil**
9 **penalty, payable to the affected employee, equal to the amount of any**
10 **underpaid wages. As noted earlier, the Legislature has provided that**
11 **aggrieved employees may under certain circumstances maintain civil**
12 **actions to recover such penalties. (§ 2699, subd. (a).) (Emphasis added.)**

13 As such, all DEFENDANTS are liable pursuant to PAGA where, as here, all
14 DEFENDANTS caused the violations at issue.

15 129. DEFENDANTS engaged in unlawful and unfair activity prohibited by the
16 California Labor Code and Wage Order 1.

17 130. DEFENDANTS violated or caused to be violated numerous provisions of the
18 California Labor Code and applicable wages orders including but not limited to Cal. Lab. Code §§
19 216, 1194, 1197 and Wage Order 1-2001 by: failing to pay minimum wages due for all hours
20 worked, willfully refusing to pay wages due and payable after demand was made while having the
21 ability to pay, and by falsely denying the amount or validity thereof, or that the same is due, with
22 intent to secure for itself any discount upon such indebtedness, and with intent to annoy, harass,
23 oppress, hinder, delay, or defraud, PLAINTIFFS and other employees to whom such indebtedness
24 is due. DEFENDANTS were at all times apprised of PLAINTIFFS’ and other employees’ work
25 schedules, timekeeping and complaints for unpaid work. Throughout PLAINTIFFS’ employment
26 with DEFENDANTS, DEFENDANTS controlled the day to day operations, had the ability to pay
27 or cause to pay PLAINTIFFS for all hours worked but willfully refused to do so.

28 131. WHEREFORE, PLAINTIFFS request relief as described herein and below.

29 **IX. PRAYER**

30 WHEREFORE, PLAINTIFFS pray for judgment as follows:

31 1. For compensatory damages in an amount according to proof with interest thereon;

- 1 2. For damages and liquidated damages, in an amount according to proof with interest
- 2 thereon;
- 3 3. For a declaratory judgment that DEFENDANTS violated PLAINTIFFS and Class
- 4 Members' rights under the California Labor Code Wage Order 1 as set forth in the
- 5 preceding paragraphs, and the California Business and Professions Code;
- 6 4. Award PLAINTIFFS and Class Members statutory damages or, in the alternative,
- 7 actual damages;
- 8 5. That DEFENDANTS be ordered and enjoined to make restitution to PLAINTIFFS
- 9 and Class Members due to their unfair competition, including disgorgement of their
- 10 wrongfully-obtained revenues, earnings, profits, compensation, and benefits,
- 11 pursuant to California Business and Professions Code §§17203 and 17204;
- 12 6. That DEFENDANTS be enjoined from continuing the unlawful course of conduct
- 13 as alleged herein;
- 14 7. That DEFENDANTS further be enjoined to cease and desist from unfair
- 15 competition in violation of California Business and Professions Code §17200 *et*
- 16 *seq.*;
- 17 8. That DEFENDANTS be enjoined from further acts of restraint of trade or unfair
- 18 competition;
- 19 9. For premium pay, premium wages, liquidated damages, statutory penalties pursuant
- 20 to the California Labor Code;
- 21 10. For attorneys' fees, interests, and costs of suit pursuant to the California Labor Code
- 22 §§ 226, 1194, 2699 and pursuant to the private attorney provisions of California
- 23 Code of Civil Procedure §1021.5;
- 24 11. For such other and further relief as the Court deems just and proper pursuant to the
- 25 procedures detailed in Labor Code § 2698 *et seq.*;
- 26 12. For all provisions of the Labor code and Wage Order 1 violated as described above
- 27 except those for which a civil penalty is specifically provided, a civil penalty of one
- 28 hundred dollars (\$100) for each aggrieved employee per pay period for the initial

violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code § 2699;

13. For all provisions of the Labor code and wage orders violated as described above for which a civil penalty is specifically provided for the violations described in this complaint and those listed in section 2699.5, and civil penalties for each aggrieved employee as specifically provided by Labor Code § 2699;
14. Pursuant to the procedures detailed in Labor Code § 2698 *et seq.* and Labor Code §§ 558, 1197.1 amounts sufficient to recover underpaid wages to DEFENDANTS' workforce; and
15. For all other remedies provided by the California Labor Code, California Code of Civil Procedure, Civil Code or common law for the violations described herein.
16. For Defendant Peninsula Packaging, LLC to be liable for all of the above remedies directly and as successor in interest for the liability of Defendants PACKAGING PLUS SERVICES, LLC, PACKAGING PLUS, LLC, and AG THERMOFORMING.
16. For Defendant Sustainable Packaging Partners, LLC to be liable for all of the above remedies directly and as successor in interest for the liability of Defendants PACKAGING PLUS SERVICES, LLC, PACKAGING PLUS, LLC, AG THERMOFORMING, and PENINSULA PACKAGING.
17. For Defendant EARTHBOUND FARM to be liable for all of the above remedies as a joint employer with Defendants PACKAGING PLUS SERVICES, LLC, PACKAGING PLUS, LLC, AG THERMOFORMING, and PENINSULA PACKAGING.

DEMAND FOR JURY TRIAL

PLAINTIFFS hereby demand trial of their claims by jury to the extent authorized by law.

Dated: November 18, 2013.

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MALLISON & MARTINEZ

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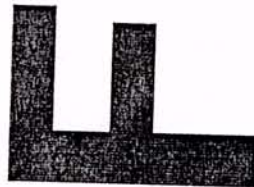
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