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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS**

ROGELIO SILVA, ADALBERTO MARTINEZ
as individuals and on behalf of all others similarly
situated,

Plaintiffs,

vs.

JERSEY CREEK DAIRY, INC.; and DOES 1-50,
Defendants.

Case No.: 23CU0188
Assigned to:
Dept.:

CLASS ACTION

COMPLAINT FOR DAMAGES FOR:

1. **Unpaid Missed Rest Breaks** (*Labor Code § 226.7 and IWC Wage Order No. 13 and 14-2001 Section 12*);
2. **Unpaid Missed Meal Breaks** (*Labor Code §§ 226.7 and 512 and IWC Wage Order No. 13 and 14-2001 Section 11*);
3. **Failure to Pay for All Overtime Wages Worked** (*Labor Code §§ 510 and 1194 and IWC Wage Order No. 13 and 14-2001 Section 3*);
4. **Failure to Pay for Sick Days** (*Labor Code § 246(a)*);
5. **Failure to Pay Minimum Wage and Pay for All Wages Earned** (*Labor Code §§ 204, 1194 and 1197*);
6. **Failure to Maintain Accurate Personnel and Payroll Records** (*Labor Code §§ 226(a), 1174, and 1198.5 and IWC Wage Order No. 13 and 14-2001 Section 7*);
7. **Failure to Pay Wages Upon Separation** (*Labor Code §§ 201 – 203*);
8. **Failure to Reimburse Business Expenses** (*Labor Code § 2802*);

- 1)
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10)
9. *Violation of California Labor Code §1102.5; §98.6;*
10. *Wrongful Termination in Violation of Public Policy;*
11. *Violation of California Business and Professions Code §§ 17200, et seq.*
12. *Civil Penalties Pursuant to Labor Code § 2699*

8) **DEMAND FOR JURY TRIAL**
9)
10)

11 COME NOW PLAINTIFFS ROGELIO SILVA, and ADALBERTO MARTINEZ, and allege
12 as follows: The allegations in this Complaint, Class Action, stated on information and belief, have
13 evidentiary support and/or are likely to have evidentiary support after reasonable opportunity for
14 further investigation and discovery.

15 **NATURE OF THE ACTION**

- 16 1. Defendant JERSEY CREEK DAIRY, INC. is operating a farm labor contractor business
17 located in Kings County, California.
18 2. During the relevant timeframe, Plaintiffs and Class Members were employed by Defendant.
19 3. This class action for relief arises from Defendant's failure to provide off-duty rest and meal
20 periods as required by law; failure to compensate Plaintiffs and Class Members at the
21 required rate for each occasion in which Defendants failed to provide rest and meal breaks;
22 failure to pay overtime wages and for all hours worked; failure to pay for sick days; failure
23 to pay the minimum wage and all wages earned; failure to keep accurate payroll records,
24 such that Plaintiffs and Class Members were given wage statements that did not accurately
25 reflect all the hours worked and all wages earned; failure to wages due upon separation on
26 time; and failure to reimburse required business expenses. In addition, as an individual
27 cause of action, Plaintiffs both claim wrongful and retaliatory termination in violation of
28 public policy.

THE PARTIES

4. Plaintiffs, Rogelio Silva, and Adalberto Martinez (hereinafter "Plaintiffs") are residents of the State of California.
5. Defendant, Jersey Creek Dairy, Inc., at all times mentioned herein, is employer whose employees worked throughout the County of Kings and in other counties in the State of California.
6. The true names and capacities, whether individual, corporate, associate or otherwise of each of the Defendants designated herein as a DOE are unknown to Plaintiffs and Class Members at this time, who therefore, sue said Defendants by fictitious names, DOES 1 to 50, and will ask leave of this Court for permission to amend this Complaint to show their names and capacities when the same have been ascertained. Plaintiffs and Class Members are informed and believe and thereon alleges that each of the Defendants designated as a DOE is legally responsible in some manner for the events and happenings herein referred to, and caused injuries and damages thereby to Plaintiffs and Class Members as herein alleged.
7. Unless otherwise individually referred to, whenever, in this Complaint, reference is made to "Defendants," such reference shall refer to all Defendants.
8. Plaintiffs and Class Members, on information and belief and based upon such basis, allege that at all times herein mentioned, each of the Defendants were acting as the agent, servant, employee of each of the other Defendants, within the scope of said agency and employment.
9. During the times and places of the incident in question, Defendants, and each of them, their agents, servants and employees became liable to Plaintiffs and Class Members for the reasons described in the complaint herein, and thereby proximately caused Plaintiffs and Class Members to sustain damages as set forth herein.
10. Plaintiffs and Class Members, on information and belief and based upon such basis, allege that all Defendants carried out a joint scheme, business plan or policy in all respects pertinent hereto and all acts and omissions herein complained of were performed within the course and scope of said employment, service, agency, common scheme, plan and/or policy.

1 11. Plaintiffs and Class Members, on information and belief and based upon such basis, allege
2 that Defendants' founders, owners, shareholders, executive officers, managers, and
3 supervisors directed, authorized, ratified and/or participated in the conduct that gives rise to
4 the claims asserted herein and derived personal financial benefit from such conduct at the
5 expense of Plaintiffs and Class Members.

6 **JURISDICTION AND VENUE**

7 12. This Court has jurisdiction over this action pursuant to California *Code of Civil Procedure*
8 § 410.10. The damages exceed the jurisdictional minimum of this Court.

9 13. Venue is proper in this Court, pursuant to California *Code of Civil Procedure* § 395.5
10 because the incidents complained of occurred in Kings County, California.

11 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTIONS**

12 14. Defendants employed Plaintiffs Rogelio Silva, Adalberto Martinez as non-exempt hourly
13 employees beginning in 2022.

14 15. During the relevant timeframe, Defendant employed Plaintiffs and Class Members as
15 laborers, cow milkers, and in other capacities

16 16. Plaintiff Rogelio Silva was hired in May 2022, until he was discharged in October, 2022
17 right after he complained to Defendant about serious violations at work. His hourly rate
18 was \$15/hour.

19 17. Plaintiff Adalberto Martinez was hired in March 2022 until he was fired on July 15, 2022,
20 right after he complained to Defendant about serious violations at work. His hourly rate
21 was \$15/hour.

22 18. During the relevant timeframe, Plaintiffs and Class Members often worked shifts of over
23 eight hours, and were not given a ten-minute, uninterrupted rest break for each such shift.
24 Plaintiffs and Class Members worked during the rest periods either under the direction and
25 supervision of Defendants, or with Defendants' knowledge and consent. Furthermore,
26 Defendants created schedules that made it difficult or impossible for Plaintiffs and Class
27 Members to take their rest breaks.

28 19. During the relevant timeframe, Plaintiffs and Class Members worked shifts of over of five
hours but their meal breaks were interrupted. Plaintiffs and Class Members worked during
the meal periods either under the direction and supervision of Defendants, or with
Defendants' knowledge and consent. Furthermore, Defendants created schedules that

- 1 made it difficult or impossible for Plaintiffs and Class Members to take their uninterrupted
2 meal breaks.
- 3 20. Plaintiffs and Class Members were not paid for missed rest and meal breaks and their
4 paycheck and wage statements did not account for the premiums due to Plaintiffs and Class
5 Members for the missed rest and meal breaks, nor accounted for overtime pay for hours
6 Plaintiffs and Class Members worked in excess of eight hours per day or 40 hours per
7 week.
- 8 21. During the relevant timeframe, there were periods where Plaintiffs and Class Members
9 routinely worked more than eight hours per day and 40 hours per week. Defendants failed
10 to pay Plaintiffs and Class Members overtime wages at the legal rates of pay for all
11 overtime hours worked.
- 12 22. Defendants failed to provide Plaintiffs and Class Members with statutory pay for sick days.
- 13 23. Defendants failed to compensate Plaintiffs and Class Members at the required rate for each
14 occasion in which Defendants failed to provide uninterrupted rest breaks and meal breaks.
15 As such, Defendants failed to pay for all the hours worked and all wages earned by
16 Plaintiffs and Class Members.
- 17 24. Defendants failed to maintain accurate payroll records, such that Plaintiffs and Class
18 Members were given wage statements that did not accurately reflect their true
19 compensation and all the hours worked. There was no reliable accurate time keeping
20 method.
- 21 25. Defendants failed to give timely final paychecks to Plaintiffs and Class Members upon
22 separation, as required by statute. In addition, the final paychecks were not accurate since
23 it did not include payment for all the hours worked and compensation earned, inclusive of
24 all premium payments for missed breaks.
- 25 26. During the relevant timeframe, Defendants failed to reimburse Plaintiffs and Class
26 Members for incurred necessary business expenses.
- 27 27. During his employment, Plaintiff Adalberto Martinez complained to the Defendants about
28 another employee, Francisco Murillo, who was carrying a knife and displayed violent
behavior which concerned and scared Plaintiff. He also reported animal abuse by that
employee, Francisco Murillo. He reported it to his supervisor Francisco (Pancho) Bobadilla

- 1 the fact that he saw Murillo twisting/breaking the tails of cows. He witnessed. Murillo
2 screaming and spooking cows. He believed that Murillo's conduct was animal abuse.
- 3 28. Plaintiff Adalberto Martinez made the complaints on June 30, 2022 and after 2 weeks he
4 got fired.
- 5 29. Plaintiff Silva complained about unsafe work environment because there were
6 inexperienced minor employees, committing animal abuse and also their working with
7 broken equipment, endangering others' lives.
- 8 30. Both Plaintiffs complained about lack of breaks and unpaid wages and business expenses
9 not being reimbursed.
- 10 31. Defendants terminated Plaintiff Adalberto Martinez' employment because they learned that
11 he was upset at Murillo's animal abuse. Defendants believed that Plaintiff Martinez had
12 disclosed or may disclose information, to a government or law enforcement agency, to a
13 person with authority over the employee or another employee who has the authority to
14 investigate, discover, or correct the violation or noncompliance, or for providing
15 information to, or testifying before, any public body conducting an investigation, hearing,
16 or inquiry.
- 17 32. Plaintiff Silva objected to illegal employment of inexperienced minors who were
18 committing animal abuse and were endangering others' lives.
- 19 33. On 10/30/2022, Defendants discharged Plaintiff Silva. He worked on that day but because
20 there were serious issues at work, he had to leave not being able to reach his supervisor, but
21 Defendant fired him under pretext that he walked off and quit voluntarily.
- 22 34. Defendants terminated Plaintiff Rogelio Silva's employment because he complained about
23 serious violations at work. Defendants believed that Plaintiff Silva had disclosed or may
24 disclose information, to a government or law enforcement agency, to a person with
25 authority over the employee or another employee who has the authority to investigate,
26 discover, or correct the violation or noncompliance, or for providing information to, or
27 testifying before, any public body conducting an investigation, hearing, or inquiry.
- 28 35. Both Plaintiffs had requested to receive statutory rest breaks and uninterrupted meal break
and requested accurate payments of their wages and overtime and requested reimbursement
of their expenses.

1 36. Plaintiff Adalberto Martinez believes and contends that the true reason Defendants chose
2 to terminate his employment on July 15, 2022, is due to his complaints to Defendants,
3 about another employee abusing cows, twisting and breaking their tails.

4 37. Plaintiff Rogelio Silva believes and contends that the true reason Defendants chose to
5 terminate his employment on Oct 30, 2022, is due to his complaints to Defendants, about
6 serious labor and safety violations at work.

7 **CLASS ACTION ALLEGATIONS**

8 38. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other
9 persons similarly situated, and thus, seek class certification. The class shall be defined as
10 follows:

11 “All persons who were employed as non-exempt employees by JERSEY CREEK DAIRY,
12 INC. in the State of California during the period commencing four years from the date of
13 PAGA filing, March 10, 2023, through the entry of final judgment in this action.”

14 39. Plaintiffs propose that the following sub-classes be created:

- 15 A. A proposed sub-class (*hereinafter* “Meal Period Class”) is defined as: All
16 individuals who have been employed and are currently employed by JERSEY
17 CREEK DAIRY, INC. within the relevant time periods prior to the filing of this
18 Complaint until resolution of this lawsuit who did not receive their required meal
19 breaks pursuant to the California Labor Code and/or applicable orders of the IWC.
- 20 B. A proposed sub-class (*hereinafter* “Rest Period Class”) is defined as: All
21 individuals who have been employed and are currently employed by JERSEY
22 CREEK DAIRY, INC. within the relevant time periods prior to the filing of this
23 Complaint until resolution of this lawsuit who did not receive their required rest
24 breaks pursuant to the California Labor Code and/or applicable orders of the IWC.
- 25 C. A proposed sub-class (*hereinafter* “Underpaid Class”) is defined as: All individuals
26 who have been and are currently employed by JERSEY CREEK DAIRY, INC.
27 within the relevant time periods prior to the filing of this Complaint until resolution
28 of this lawsuit who were not paid full complete and accurate compensation for all
hours worked.
- D. A proposed sub-class (*hereinafter* “Overtime Class”) is defined as: All individuals
who have been and are currently employed by JERSEY CREEK DAIRY, INC.

1 within the relevant time periods prior to the filing of this Complaint until resolution
2 of this lawsuit who were not paid full complete and accurate compensation for all
3 overtime worked.

4 E. A proposed sub-class (*hereinafter* “Wage Statement Class”) is defined as: All
5 individuals who have been and are currently employed by JERSEY CREEK
6 DAIRY, INC. within the relevant time periods prior to the filing of this Complaint
7 until resolution of this lawsuit whose wage statements did not accurately reflect
8 gross wages earned. Specifically, all the hours worked, the overtime and additional
9 hours of pay employees earn for each workday they did not receive a meal and/or
10 rest break. This subclass includes the class members whose final paycheck did not
11 accurately reflect gross wages earned. Specifically, all the hours worked, the
12 overtime and additional hours of pay employees earn for each workday they did not
13 receive a meal and/or rest break.

14 F. A proposed sub-class (*hereinafter* “Final Paycheck Class”) is defined as: All
15 individuals who were employed by JERSEY CREEK DAIRY, INC. within the
16 relevant time periods prior to the filing of this Complaint until resolution of this
17 lawsuit who did not receive their final paycheck within 72 hours after the final day
18 of work or at the time of their termination.

19 G. A proposed sub-class (*hereinafter* “Minimum Wage Class”) is defined as: All
20 individuals who have been and are currently employed by JERSEY CREEK
21 DAIRY, INC. within the relevant time periods prior to the filing of this Complaint
22 until resolution of this lawsuit who did not receive at least the minimum wage for
23 all the hours worked.

24 H. A proposed sub-class (*hereinafter* “Personnel and Payroll Records Class”) is
25 defined as: All individuals who have been and are currently employed by JERSEY
26 CREEK DAIRY, INC. within the relevant time periods prior to the filing of this
27 Complaint until resolution of this lawsuit who employer failed to maintain accurate
28 personnel and payroll record(s) for them.

I. A proposed sub-class (*hereinafter* “Sick Pay Class”) is defined as: All individuals
who have been and are currently employed by JERSEY CREEK DAIRY, INC.
within the relevant time periods prior to the filing of this Complaint until resolution

1 of this lawsuit who were not paid full complete and accurate compensation for all
2 sick days.

3 J. A proposed sub-class (*hereinafter* “Business Expenses Class”) is defined as: All
4 individuals who have been and are currently employed by JERSEY CREEK
5 DAIRY, INC. within the relevant time periods prior to the filing of this Complaint
6 until resolution of this lawsuit who were not reimbursed for necessary business
7 expenses.

8 40. The proposed class (*hereinafter* “Class”) shall consist of all individuals found in the
9 following sub-classes: Meal Period Class, Rest Period Class, Underpaid Class, Overtime
10 Class, Wage Statement Class, Final Paycheck Class, Minimum Wage Class and Personnel
11 and Payroll Records Class, Sick Play Class, and Business Expenses Class.

12 41. All claims alleged herein arise under California law for which Plaintiffs and Class
13 Members seek relief authorized by California law.

14 42. Excluded from the Class are Defendant(s) in this action, any entity in which Defendant(s)
15 have a controlling interest, any officers, directors, and shareholders of Defendant, and legal
16 representatives, heirs, successors, and assigns of Defendant.

17 43. There is a well-defined community of interest in this litigation and the Class is easily
18 ascertainable:

19 44. Numerosity: The members of the Class (and each subclass, if any) are so numerous that
20 joinder of all members would be unfeasible and impractical. The membership of the Class
21 is unknown to Plaintiffs at this time. However, the Class is estimated to be greater than
22 fifty (50) individuals and the identity of such membership is readily ascertainable by
23 inspection of Defendant’s employment records.

24 45. Typicality: Plaintiffs are qualified to and will fairly and adequately protect the interests of
25 each Class Member with whom they have a well-defined community of interest, and
26 Plaintiffs’ claims (or defenses, if any), are typical of all Class Members as demonstrated
27 herein.

28 46. Adequacy: Plaintiffs are qualified to, and will fairly and adequately protect the interests of
each Class Member with whom they have a well-defined community of interest and
typicality of claims, as alleged herein. Plaintiffs acknowledge that they have an obligation
to the Court to make known any relationship, conflict, or differences with any Class

1 Member. Plaintiffs' attorneys and proposed Class counsel are versed in the rules governing
2 class action discovery, certification, and settlement. Plaintiffs have incurred, and,
3 throughout the duration of this action, will continue to incur costs and attorneys' fees that
4 have been, are, and will be necessarily expended for the prosecution of this action for the
5 substantial benefit of each Class Member.

6 47. Superiority: The nature of this action makes the use of class action adjudication superior to
7 other methods. Class action will achieve economies of time, effort, and expense as
8 compared with separate lawsuits, and will avoid inconsistent outcomes because the same
9 issues can be adjudicated in the same manner and at the same time for the entire class.

10 48. There are common questions of law and fact as to the Class (and each subclass, if any), that
11 predominate over questions affecting only individual members, including but not limited
12 to:

13 49. Whether Defendants had a policy of not providing uninterrupted statutory mandated rest
14 periods to Plaintiffs and Class Members or compensation for rest periods;

15 50. Whether Defendants had a policy of not providing uninterrupted statutory mandated meal
16 periods to Plaintiffs and Class Members or compensation for meal periods;

17 51. Whether Defendants created schedules in such a manner that made it difficult or impossible
18 for Plaintiffs, and similarly situated Class Members, to take uninterrupted rest periods;

19 52. Whether Defendants created schedules in such a manner that made it difficult or impossible
20 for Plaintiffs, and similarly situated Class Members, to take uninterrupted meal periods;

21 53. Whether Defendants failed to pay Plaintiffs and Class Members for the overtime hours
22 worked during the relevant timeframe;

23 54. Whether Defendants failed to pay Plaintiffs and Class Members for sick days during the
24 relevant timeframe;

25 55. Whether Defendants failed to pay Plaintiffs and Class Members for necessary business
26 expenditures during the relevant timeframe;

27 56. Whether Defendants had a policy of requiring Plaintiffs and Class Members to continue
28 working after clocking out;

57. Whether Defendants failed to pay Plaintiffs and Class Members for the total hours worked
during the relevant timeframe;

- 1 58. Whether Defendants failed to keep accurate payroll records, such that inaccurate wage
2 statements were issued to Plaintiffs and Class Members;
- 3 59. Whether Defendants failed to pay Plaintiffs and Class Members an accurate and timely
4 final paycheck;
- 5 60. Whether Defendants failed to pay Plaintiffs and Class Members at least minimum wage for
6 all the hours worked;
- 7 61. Whether Defendants improperly retained, converted, appropriated, or deprived Plaintiffs
8 and other Class Members of the use of monies or sums, which Plaintiffs and Class
9 Members were legally entitled to;
- 10 62. Whether Defendants engaged in unfair business practices in violation of California
11 *Business and Professions Code §§ 17200, et seq.*; and
- 12 63. The appropriate amount of damages, restitution, or monetary penalties resulting from
13 Defendants' violations of California law.

14 **FIRST CAUSE OF ACTION**

15 ***Unpaid Missed Rest Breaks***

16 ***(Labor Code § 226.7(a) and IWC Wage Order No. 13 and 14-2001 Section 12)***

17 *(By Plaintiffs and on Behalf of all Similarly Situated Class Members,*

18 *Against All Defendants)*

- 19 64. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
20 herein, the material allegations set forth in prior paragraphs of this Complaint.
- 21 65. At all times herein set forth, Labor Code section 218 authorizes an employee to sue
22 directly for any wages or penalty due to him or her under this article of the Labor Code.
- 23 66. At all times herein set forth, Labor Code section 226.7(a) provides that no employer
24 shall require an employee to work during any rest period mandated by an applicable
25 order of the IWC.
- 26 67. Defendants' conduct, as alleged herein, violates IWC Wage Order No. 13, 14-2001 section
27 11 and Labor Code § 226.7, and also California Code of Regulations, Title 8, sections
28 3395(c) and (d) which provides that no employer shall require any employee to work
during any rest period mandated by an applicable order of the IWC and also must allow
employees a cool down period when working in outdoor places.

1 68. The language of IWC Wage Order No. 13 and 14-2001 section 12 relating to rest periods
2 tracks the language of the Labor Code. (*Code of Regulations*, title 8, section 11070, subd.
3 11.), which states: “Every employer shall authorize and permit all employees to take rest
4 periods, which insofar as practicable shall be in the middle of each work period. The
5 authorized rest period time shall be based on the total hours worked daily at the rate of ten
6 (10) minutes net rest time per four hours or major fraction thereof. However, a rest period
7 need not be authorized for employees whose total daily work time is less than three and
8 one-half (3 ½) hours. Authorized rest period time shall be counted, as hours worked for
which there shall be no deductions from wages.”

9 69. During the relevant time period, Plaintiffs and Class Members worked more than three and
10 one-half (3 ½) hours per workday, and were not allowed to take paid rest breaks that they
11 were legally entitled to pursuant to IWC Wage Order No. 13 and 14-2001 section 12.

12 70. Defendants’ conduct, as alleged herein, violates IWC Wage Order No. 13 and 14-2001
13 section 12 and Labor Code § 226.7(a), which provides that no employer shall require any
14 employee to work during any rest period mandated by an applicable order of the IWC.

15 71. Pursuant to Labor Code section 226.7(b), and IWC Wage Order No. 13-2001 section
16 12(B), Plaintiffs and Class Members are entitled to recover from Defendants one (1)
17 additional hour of pay at Plaintiffs and Class Members regular rate of compensation for
18 each work day that a rest period was not provided, for a three-year statutory period dating
back from the date of the commencement of this action.

19 72. Pursuant to Labor Code section 558, Plaintiffs and Class Members are entitled to fifty
20 dollars (\$50.00) for each pay period for which they were underpaid in addition to an
21 amount sufficient to recover underpaid wages and for each subsequent violation, one
22 hundred dollars (\$100.00) for each pay period for which Plaintiffs and Class Members
23 were underpaid in addition to an amount sufficient to recover underpaid wages.

24 **SECOND CAUSE OF ACTION**

25 ***Unpaid Missed Meal Breaks***

26 ***(Labor Code §§ 226.7(a) and 512 and IWC Wage Order No. 13 and 14-2001 Section 11)***

27 ***(By Plaintiffs And On Behalf Of All Similarly Situated Class Members,***

28 ***Against All Defendants)***

- 1 73. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
2 herein, the material allegations set forth in prior paragraphs of this Complaint.
- 3 74. At all times herein set forth, Labor Code section 218 authorizes employees to sue directly
4 for any wages or penalty due to them under this article of the California Labor Code.
- 5 75. At all times herein set forth, Labor Code section 226.7 provides that no employer shall
6 require an employee to work during any meal period mandated by an applicable order of
7 the IWC.
- 8 76. At all times herein set forth, Labor Code section 512(a) provides that an employer may not
9 employ an employee for a work period of more than five (5) hours per day without
10 providing the employee with a meal period of not less than thirty (30) minutes, except that
11 if the total work period per day of the employee is not more than six (6) hours, the meal
12 period may be waived by mutual consent of both the employer and the employee.
- 13 77. At all times herein set forth, Labor Code section 512(a) further provides that an employer
14 may not employ an employee for a work period of more than ten (10) hours per day
15 without providing the employee with a second meal period of not less than thirty (30)
16 minutes, except that if the total hours worked is no more than twelve (12) hours, the second
17 meal period may be waived by mutual consent of the employer and the employee, only if
18 the first meal period was not waived.
- 19 78. The language of applicable IWC Wage Order(s), section 11 relating to meal periods tracks
20 the language of the Labor Code. (*Cal. Code Regs.*, tit. 8, section 11130, 11140 subd. 11.)
- 21 79. Defendants fostered a work environment where the taking of uninterrupted thirty (30)
22 minute meal breaks by its employees was essentially prohibited because Defendants were
23 more concerned about their profit margin, than its own employees' welfare. As such,
24 Plaintiffs and Class Members could not take any thirty (30) minute uninterrupted meal
25 breaks without the risk of being reprimanded or terminated.
- 26 80. Because Defendants failed to afford proper meal periods, they are liable to Plaintiffs and
27 Class Members for one hour of additional pay at the regular rate of compensation for each
28 workday that the proper meal periods were not provided, pursuant to Cal. Labor Code
Section 226.7(b) and IWC Wage Order No. 13-2001, section 11 and IWC Wage Order No.
14-2001, section 11.

1 81. By violating Cal. Labor Code Section 226.7 and 512, and applicable wage order, section
2 11, Defendants are also liable to Plaintiffs and Class Members for reasonable attorneys'
3 fees and costs under Cal. Labor Code Section 218.5.

4 **THIRD CAUSE OF ACTION**

5 ***Failure to Pay for All Overtime Wages Earned***

6 ***(Labor Code §§ 510 and 1194 and IWC Wage Order No. 13 and 14-2001 Section 3)***

7 *(By Plaintiffs And On Behalf Of All Similarly Situated Class Members,*

8 *Against All Defendants)*

9 82. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
10 herein, the material allegations set forth in prior paragraphs of this Complaint.

11 83. At all relevant times during the applicable limitations period, Plaintiffs and Class Members
12 have been non-exempt employees of Defendants and entitled to the benefits of Cal. Labor
13 Code Sections 510 and 1194 and the pertinent Wage Order(s).

14 84. IWC Wage Order No. 13 and 14-2001 section 2(G) define "hours worked" as "the time
15 during which an employee is subject to the control of an employer, and includes all the
16 time the employee is suffered or permitted to work, whether or not required to do so."

17 85. In relevant part, section 3 of IWC 13-2001 states: (A) Daily Overtime- General Provisions:

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

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

1 (b) Double the employee's regular rate of pay for all hours worked in excess of 12
2 hours in any workday and for all hours worked in excess of eight (8) hours on the
3 seventh (7th) consecutive day of work in a workweek.

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

7 86. Cal. Labor Code Section 510 states: "Eight hours of labor constitutes a day's work. Any
8 work in excess of eight hours in one workday and any work in excess of 40 hours in any
9 one workweek and the first eight hours worked on the seventh day of work in any one
10 workweek shall be compensated at the rate of no less than one and one-half times the
11 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
12 compensated at the rate of no less than twice the regular rate of pay for an employee. In
13 addition, any work in excess of eight hours on any seventh day of a workweek shall be
14 compensated at the rate of no less than twice the regular rate of pay of an employee.
15 Nothing in this section requires an employer to combine more than one rate of overtime
16 compensation in order to calculate the amount to be paid to an employee for any hour of
17 overtime work."

18 87. With respect to overtime wages, the regular rate of pay under California law must include
19 "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14
20 (quoting 29 U.S.C. Section 207(e)). This requirement includes, but is not limited to,
21 commissions and nondiscretionary bonuses. See *Huntington Memorial Hosp. v. Superior*
22 *Court* (2005) 131 Cal App. 4th 893, 904-05.

23 88. Plaintiffs and Class Members were working more than 8 hours a day and more than 40
24 hours a week and they were not paid overtime.

25 89. Plaintiffs and Class Members have been damaged in a sum to be proven and request relief
26 as described below.

27 **FOURTH CAUSE OF ACTION**

28 ***Failure to Pay for Sick Days***

(Labor Code § 246(a))

(By Plaintiffs And On Behalf Of All Similarly Situated Class Members,

Against All Defendants)

1 90. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
2 herein, the material allegations set out in prior paragraphs of this Complaint.

3 91. Cal. Labor Code Section 246(a) provides: (a) (1) An employee who, on or after July
4 1, 2015, works in California for the same employer for 30 or more days within a year
5 from the commencement of employment is entitled to paid sick days as specified in
6 this section.

7 92. Defendants failed and refused to pay and Class Members for their sick days.

8 **FIFTH CAUSE OF ACTION**

9 ***Failure to Pay Minimum Wage and Pay for All Wages Earned***

10 ***(Labor Code §§ 204, 1194 and 1197)***

11 *(By Plaintiffs And On Behalf Of All Similarly Situated Class Members,*
12 *Against All Defendants)*

13 93. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
14 herein, the material allegations set forth in prior paragraphs of this Complaint.

15 94. Cal. Labor Code Section 204 requires California employers to pay employees for all wages
16 earned.

17 95. Cal. Labor Code Section 1194 provides: "...any employee receiving less than the legal
18 minimum wage or the legal overtime compensation applicable to the employee is entitled
19 to recover in a civil action the unpaid balance of the full amount of this minimum wage or
20 overtime compensation, including interest thereon, reasonable attorney's fees, and costs of
21 suit."

22 96. Defendants failed to compensate Plaintiffs and Class Members for all hours worked,
23 including, but not limited to, the hours Plaintiffs and Class Members were working off
24 clock, the hours worked during their meal and rest breaks, as well as overtime pay, and for
25 which they did not receive the proper compensation under the law.

26 97. Plaintiffs and Class Members have been damaged in a sum to be proven and request relief
27 as described below.

28 **SIXTH CAUSE OF ACTION**

Failure to Maintain and Produce Accurate Personnel and Payroll Records

(Labor Code §§ 226(a), 1174, and 1198.5 and IWC Wage Order No. 13 and 14-2001)

(By Plaintiffs And On Behalf Of All Similarly Situated Class Members,

Against All Defendants)

98. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in prior paragraphs of this Complaint.

99. Cal. Labor Code Section 226(a), applicable IWC such as wage order No. 13 and 14-2001, section 7(A), and Cal. Labor Code section 1174 require employers to maintain accurate payroll records and to provide semi-monthly or at the time of each payment of wages to furnish each employee with a statement itemizing, among other things, the total hours worked by the employee.

100. Defendants have violated Cal. Labor Code Sections 226(a), 1174, 1198.5 and IWC Wage Order No. 13 and 14-2001, section 7(A) by willfully failing to keep accurate personnel record and the required payroll records showing the actual hours worked each day by Plaintiffs and Class Members. As a direct and proximate result of Defendants' failure to maintain payroll records, Plaintiffs and Class Members have suffered economic harm as they have been precluded from accurately monitoring the number of hours worked and thus seeking payment for all missed meal periods and rest breaks.

101. Plaintiffs and Class Members have been damaged in a sum to be proven and request relief as described below.

SEVENTH CAUSE OF ACTION

Failure to Pay Wages Upon Separation

(Labor Code §§ 201-203)

(By Plaintiffs And On Behalf Of All Similarly Situated Class Members,

Against All Defendants)

102. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in prior paragraphs of this Complaint.

103. Labor Code sections 201 – 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter; unless the employee had given seventy-two (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. Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in

1 accordance with Labor Code sections 201 and 202, then the wages of the employee shall
2 continue as a penalty from the due date, and at the same rate until paid or until an action is
3 commenced; but the wages shall not continue for more than thirty (30) days.

4 104. During the relevant time period, Defendants failed to pay Plaintiffs and Class
5 Members, who are no longer employed by Defendant, Plaintiffs' and Class Members'
6 wages, earned and unpaid, either at the time of discharge, or within seventy-two (72)
7 hours of them leaving Defendant's employ in violation of Labor Code section 201 –
8 203.

9 105. Plaintiffs and Class Members have been damaged in a sum to be proven and
10 request relief as described below.

11 **EIGHTH CAUSE OF ACTION**

12 ***Failure to Reimburse Required Business Expenses***

13 ***(Labor Code § 2802)***

14 *(By Plaintiffs And On Behalf Of All Similarly Situated Class Members,*

15 *Against All Defendants)*

16 106. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
17 herein, the material allegations set out in prior paragraphs of this Complaint.

18 107. Labor Code section 2802 requires an employer to "indemnify his or her employee
19 for all necessary expenditures or losses incurred by the employee in direct
20 consequence of the discharge of his or her duties"

21 108. Plaintiffs incurred necessary business expenses. They had to pay for their own
22 drinking water while working when it was Defendant's duty to provide employees
23 with drinking water.

24 109. Plaintiffs incurred necessary business expenses. They had to use their own cell
25 phone while working in order to communicate with the Defendant without getting
26 reimbursed for any part of their phone bills, when it was Defendant's duty to
27 reimburse employees.

28 110. As part of their job duties, Plaintiffs incurred necessary business expenses
including the following: they had to pay for boots and gloves in order to complete
their duties.

- 1 111. Plaintiffs and Class Members were required to spend their own money to
2 purchase necessary business expenditures, and were not reimbursed by the Defendant.
- 3 112. All said expenses were necessary for Plaintiffs and Class Members to fulfill their
4 job functions for the Defendants.
- 5 113. Plaintiffs and Class Members sought reimbursement of these necessary expenses
6 incurred at Defendants' direction and with assurance of payment, but Defendants
7 have consistently refused to reimburse and indemnify Plaintiffs and Class Members
8 for these expenses.
- 9 114. Accordingly, Plaintiffs and Class Members have been deprived of legally required
10 reimbursement, and Defendants should be liable to Plaintiffs and Class Members for
11 these sums, plus attorney's fees, plus interest.
- 12 115. The monies retained by Defendants should be deemed Plaintiffs' and Class
13 Members monies, held in trust for Plaintiffs and Class Members and subject to a
14 proper claim for reimbursement and disgorgement.

15 **NINTH CAUSE OF ACTION**

16 **(Violation of Labor Code §§1102.5 and 98.6)**

17 *(By Plaintiffs against all Defendants)*

- 18 116. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the
19 material allegations set forth in the previous paragraphs of this Complaint.
- 20 117. Labor Code section 1102.5 states: (a) An employer, or any person acting on behalf
21 of the employer, shall not make, adopt, or enforce any rule, regulation, or policy
22 preventing an employee from disclosing information to a government or law
23 enforcement agency, to a person with authority over the employee, or to another
24 employee who has authority to investigate, discover, or correct the violation or
25 noncompliance, or from providing information to, or testifying before, any public body
26 conducting an investigation, hearing, or inquiry, if the employee has reasonable cause
27 to believe that the information discloses a violation of state or federal statute, or a
28 violation of or noncompliance with a local, state, or federal rule or regulation,
regardless of whether disclosing the information is part of the employee's job duties.

1 (b) An employer, or any person acting on behalf of the employer, shall not retaliate
2 against an employee for disclosing information, or because the employer believes that
3 the employee disclosed or may disclose information, to a government or law
4 enforcement agency, to a person with authority over the employee or another employee
5 who has the authority to investigate, discover, or correct the violation or
6 noncompliance, or for providing information to, or testifying before, any public body
7 conducting an investigation, hearing, or inquiry, if the employee has reasonable cause
8 to believe that the information discloses a violation of state or federal statute, or a
9 violation of or noncompliance with a local, state, or federal rule or regulation,
10 regardless of whether disclosing the information is part of the employee's job duties.

11 (c) An employer, or any person acting on behalf of the employer, shall not retaliate
12 against an employee for refusing to participate in an activity that would result in a
13 violation of state or federal statute, or a violation of or noncompliance with a local,
14 state, or federal rule or regulation.

15 118. Labor Code section 98.6 states: (a) A person shall not discharge an employee or
16 in any manner discriminate, retaliate, or take any adverse action against any employee
17 or applicant for employment because the employee or applicant engaged in any
18 conduct delineated in this chapter.

19 119. Plaintiffs were not able to take all their statutory breaks and were forbidden to
20 complain about it or report to the other employees to correct the violation. Also,
21 Plaintiffs were not paid accurate overtime and were not paid correct wages and when
22 they complained to the Defendant, they were dismissed.

23 120. Defendants terminated Plaintiff Adalberto Martinez' employment because they
24 learned that he was upset at another employee, Murillo, for animal abuse. Defendants
25 believed that Plaintiff Martinez had disclosed or may disclose information, to a
26 government or law enforcement agency, to a person with authority over the employee
27 or another employee who has the authority to investigate, discover, or correct the
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1 violation or noncompliance, or for providing information to, or testifying before, any
2 public body conducting an investigation, hearing, or inquiry.

3 121. Defendants constructively discharged Plaintiff Silva when he objected to illegal
4 employment of inexperienced minor who were abusing animals and were endangering
5 others' lives.

6 122. Both Plaintiffs had requested to receive statutory rest breaks and uninterrupted meal
7 breaks.

8 123. Defendants terminated Martinez and discharged Silva when they complained about
9 inaccurate wage payments, unpaid wages, unpaid overtime, lack of statutory breaks and
10 not receiving reimbursement for their business expenses. Defendants believed that
11 Plaintiffs had disclosed or may disclose information, to a government or law
12 enforcement agency, to a person with authority over the employee or another employee
13 who has the authority to investigate, discover, or correct the violation or
14 noncompliance, or for providing information to, or testifying before, any public body
15 conducting an investigation, hearing, or inquiry.

16 124. Plaintiffs have been damaged in a sum to be proven and requests relief as described
17 below.

18 125. Under Labor Code § 6310 Plaintiffs are entitled to injunctive relief including
19 reinstatement and reimbursement of lost wages and benefits.

20 126. Plaintiffs were forced to hire The Law Offices of Farrah Mirabel, and are entitled to
21 recover reasonable attorney fees.

22 127. Plaintiffs allege that they were wrongfully terminated. Such acts constitute oppression
23 and malice because they were committed with the sole intent of causing injuries to
24 Plaintiffs. These oppressive and malicious acts, as herein above-alleged, were committed
25 by Defendants and/or each of them through their Directors, Officers, Managing Employees,
26 were ratified by Defendants and each of them at the time these acts were being committed.
27 Therefore, Plaintiffs are entitled to damages in an amount according to proof at trial and
28 punitive damages in an amount sufficient to deter and punish Defendants and each of them
pursuant to Civil Code § 3294.

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TENTH CAUSE OF ACTION

Wrongful Termination/Constructive Discharge in Violation of Public Policy

(By Plaintiffs Against all Defendants)

128. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material allegations set out in the prior paragraphs of this Complaint.

129. “Public policy” has been defined broadly to mean “that principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public or against the public good.” (*Petermann v. International Brotherhood of Teamsters* (1959) 174 Cal.App.2d 184, 188.) Holding an employer liable for discharging an employee’s employment due to a violation of public policy as it is not supported by either constitutional or statutory provisions inures to the benefit of the public at large rather than serving merely the interests of the individual.

130. Defendants discharged Plaintiffs, for complaining to Defendants for various labor code violations and also animal abuse by other employees .

131. Therefore, Plaintiffs allege that Defendants have terminated their employment in violation of Public Policy. Plaintiffs allege that as a direct and proximate result of Defendants’ wrongful conduct (Plaintiffs’ employment being terminated on the above-described basis); Plaintiffs have now sustained monetary damages and severe emotional distress in an amount to be proven at trial.

132. Each of the wrongful and deliberated acts committed by Defendants, as herein alleged, were acts that constitute oppression and malice because they were committed with the sole intent to discharge Plaintiffs from their employment because Defendants feared Plaintiffs would have alerted a government entity of Defendants’ illegal business practices.

133. Plaintiffs are informed and believe and thereon allege that each of the oppressive and malicious acts committed by Defendants, as herein above alleged, were committed and/or ratified by Defendants and their directors, officers, managing employees, and therefore, Plaintiffs are entitled to an award of punitive damages against Defendants and each of them.

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134. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in prior paragraphs.

136. California Business & Professions Code Section 17204 allows “any person acting for the interest of itself, its members or the general public” to prosecute a civil action for violation of the UCL.

137. Beginning at an exact date unknown to Plaintiffs and Class Members, but at least four years prior to the filing of this action, Defendants have improperly, fraudulently, and unlawfully failed to provide Plaintiffs and Class Members with meal and rest breaks, failed to provide compensation for the missed meal and rest breaks, failed to provide compensation for all hours worked and all wages earned, failed to pay compensation for all over-time hours worked, failed to pay for sick days, and provided Plaintiffs and Class Members with inaccurate wage statements, and have thereby committed unlawful, unfair, and/or fraudulent business acts and practices as defined by California Business & Professions Code Section 17200, by engaging in the following:

- A. Failing and refusing to provide meal periods and rest breaks to Plaintiffs and Class Members;
- B. Failing to pay all accrued meal period and rest break compensation to Plaintiffs and Class Members;
- C. Failing to pay for all hours worked and pay for all overtime compensation to Plaintiffs and Class Members;
- D. Failing to reimburse Plaintiffs and Class Members for their business expenses;
- E. Failing to pay for sick days to Plaintiffs and Class Members; and
- F. Failing to maintain accurate personnel and payroll records and provide accurate itemized wage statement to Plaintiffs and Class Members.

1 138. The violation of these laws serve as unlawful, unfair, and/or fraudulent predicate acts
2 and practices for purposes of California Business and Professions Code Section 17200.

3 139. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent acts
4 and practices described herein, Defendants have received and continue to hold ill-gotten
5 gains belonging to Plaintiffs and Class Members. As a direct and proximate result of
6 Defendants' unlawful business practices, Plaintiffs and Class Members have suffered
7 economic injuries including, but not limited to, compensation for missed meal periods and
8 over-time hours worked. Defendants have profited from their unlawful, unfair, and/or
9 fraudulent acts and practices in failing to provide meal period and rest break compensation
10 to Plaintiffs and Class Members, as well as compensation for over-time hours worked.

11 140. Plaintiffs and Class Members are entitled to restitution pursuant to California Business
12 & Professions Code Sections 17203 and 17208 for all meal period and rest break
13 compensation, unpaid wages and interest since four years prior to the filing of this action.

14 141. Plaintiffs and Class Members are entitled to enforce all applicable penalty provisions of
15 the California Labor Code pursuant to California Business & Professions Code Section
16 17202.

17 142. Plaintiffs' and Class Members' success in this action will enforce important rights
18 affecting the public interest. In this regard, Plaintiffs and Class Members, sue on behalf of
19 themselves and the general public. Plaintiffs and Class Members seek and are entitled to
20 unpaid compensation, declaratory and injunctive relief, civil penalties, and any other
21 appropriate remedy.

22 143. Injunctive relief is necessary and appropriate to prevent Defendants from continuing
23 and repeating their unlawful, unfair and fraudulent business acts and practices alleged
24 above.

25 144. In order to prevent Defendants from profiting and benefitting from their wrongful and
26 illegal acts and continuing those acts, an order requiring Defendants to disgorge all the
27 profits and gains they have reaped and restore such profits and gains to the Plaintiffs and
28 Class Members, from whom they were unlawfully taken.

145. Plaintiffs and Class Members have assumed the responsibility of enforcement of the
laws and lawful claims specified herein. There is a financial burden incurred in pursuing

1 this action which is in the public interest. Therefore, reasonable attorneys' fees are
2 appropriate pursuant to Cal. Code of Civil Procedure Section 1021.5.

3 146. By all of the said foregoing alleged conduct Defendants have committed, and are
4 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within
5 the meaning of Cal. Business & Professions Code Section 17200, et seq.

6 147. As a direct and proximate result of the unfair business practices described above,
7 Plaintiffs and Class Members have all suffered significant losses and Defendants have been
8 unjustly enriched.

9 148. Pursuant to Cal. Business & Professions Code Section 17203, Plaintiffs and Class
10 Members are entitled to: (a) restitution of money acquired by Defendants by means of their
11 unfair business practices, in amounts not yet ascertained but to be ascertained at trial; (b)
12 injunctive relief against defendants' continuation of their unfair business practices, and (c)
13 a declaration that defendants' business practices are unfair within the meaning of the
14 statute.

15 **TWELFTH CAUSE OF ACTION**

16 ***Civil Penalties Pursuant to Labor Code § 2699***

17 *(By Plaintiffs, Against All Defendants)*

18 149. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material
19 allegations set out in prior paragraphs of this Complaint.

20 150. Plaintiffs on behalf of the people of the State of California and as "Aggrieved
21 Employees" acting as private attorney under the California Labor Code Private Attorneys
22 General Act of 2004, §2698, et seq., bring this action, on a representative basis. All current
23 and former employees of Defendant within one year of serving notice on the LWDA to the
24 present are aggrieved employees.

25 151. Defendants failed to comply with *Labor Code* requirements due to erroneous, willful and
26 intentional employment practices and policies. Plaintiffs bring this representative action on
27 behalf of themselves, all other similarly situated aggrieved employees, and the State of
28 California, based upon the claims articulated below. Plaintiffs provided notice of their claims
pursuant to §2698 et. seq., to the Labor and Workforce and Development Agency ("LWDA")
as illustrated by the attached Exhibit, the content of which is expressly incorporated herein.
The LWDA has not provided any notice to Plaintiffs following the exhaustion of the 65-day

1 notice period required by 2699.3(a)(2)(B). Accordingly, Plaintiffs now bring this Complaint
2 for civil penalties under the Private Attorneys General Act (“PAGA”), *Labor Code* §2698 *et*
3 *seq.*

4 152. As a result of the actions alleged herein, Plaintiff seeks penalties under Labor Code §§
5 2698 and 2699 because of Defendants’ violation of Labor Code §§ 98.6, 201-204, 210, 218.5,
6 223, 225.5, 226, 226(a), 226(b), 226.3, 226.7, 246, 256, 510, 512, 558, 558.1, 1119.5, 1174,
7 1174.5, 1193.6, 1194, 1197, 1197.1, 1197.5, 1198, 1198.3, 1198.5, 1199, 1199.5, 2802 and
8 2698-2699, 2699.5, which call for civil penalties.

9 153. Plaintiffs and aggrieved parties request for Penalties Pursuant to *Labor Code*
10 §2699:

- 11 a. As applicable, for civil penalties under *Labor Code* §2699(f), for all violations
12 of the *Labor Code* except for those for which a civil penalty is specifically
13 provided, in the amount of one hundred dollars (\$100.00) for each aggrieved
14 employee per pay period for the initial violation; and two hundred dollars
15 (\$200.00) for each aggrieved employee per pay period for each subsequent
16 violation;
- 17 b. As applicable, civil penalties under *Labor Code* §558 (in addition to and
18 entirely independent and apart from any other penalty provided in the *Labor*
19 *Code*), for violations of *Labor Code* §§500-556, in the amount of \$50 for each
20 underpaid aggrieved employee for each pay period the aggrieved employee was
21 underpaid in addition to an amount sufficient to recover underpaid wages, and
22 \$100 for each subsequent violation for each underpaid employee for each pay
23 period for which the employee was underpaid in addition to an amount
24 sufficient to recover underpaid wages;
- 25 c. As applicable, for civil penalties under *Labor Code* §1197.1 (in addition to and
26 entirely independent and apart from any other penalty provided in the *Labor*
27 *Code*), for violations of *Labor Code* §§1194 and 1197, in the amount of \$100
28 for each underpaid aggrieved employee for each pay period the aggrieved
employee was intentionally underpaid in addition to an amount sufficient to
recover underpaid wages, and \$250 for each subsequent violation for each
underpaid aggrieved employees regardless of whether the initial violation was

intentionally committed in addition to an amount sufficient to recover underpaid wages;

- d. As applicable, for civil penalties under *Labor Code* §210 (in addition to and entirely independent and apart from any other penalty provided in the *Labor Code*), for each employee who is/was not paid wages in accordance with *Labor Code* §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5) in the amount of a civil penalty of \$100 for each aggrieved employee per pay period for each initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;
- e. As applicable, for civil penalties under *Labor Code* §226.3 (in addition to and entirely independent and apart from any other penalty provided in the *Labor Code*), for each violation of *Labor Code* §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation; and
- f. As applicable, for any and all additional civil penalties and sums as provided by the *Labor Code* and/or other relevant statutes.

154. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to Plaintiffs and all other similarly situated aggrieved employees.

155. Further, Plaintiffs are entitled to recover reasonable attorneys' fees and costs pursuant to *Labor Code* §§2699(g)(1) and any other applicable statute.

156. Labor Code Section 2699.3 provides that "The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

157. Plaintiffs complied with Labor Code Section 2699.3. Written notice was served on Defendants, in accordance with the provision of Section 2699.3 on March 10, 2023. The one year limitation period is tolled since Plaintiffs did

1 complain with Labor commissioner within the first year of his termination. More
2 than 65 days have since passed from the postmark date of the notice provided by
3 Plaintiffs to Defendants. Attached to this complaint as **Exhibit "A"**, is a copy of
4 the PAGA letter and proof of mailing to Defendants. Also Amended PAGA letter
5 was sent to counsel for Defendants. To date, the California Labor and Workforce
6 Development Agency has not provided Plaintiffs with a notice of intent to
7 investigate these violations. Moreover, Defendants have failed to provide Plaintiffs
8 with notice that they have cured the violations, will cure the violations now, or will
9 cure the violations in the future. Consequently, pursuant to Labor Code Section
10 2699.3(a)(2)(A), Plaintiffs may proceed and file a complaint and pursuant to Labor
11 Code Section 2699.3(a)(2)(C), to amend this complaint for penalties pursuant to
12 Labor Code section 2699.

13 **REQUEST FOR JURY TRIAL**

14 Plaintiffs and Class Members hereby request a trial by jury for all issues so triable.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiffs, on behalf of themselves and the proposed Class, pray for judgment
17 and the following specific relief against Defendants as follows:

- 18 1. That the Court certify the proposed Class and Subclasses, and any other class or subclasses
19 as appropriate under California Code of Civil Procedure section 382.
- 20 2. That Plaintiffs be appointed as the Class Representative;
- 21 3. That The Law Offices of Farrah Mirabel be appointed as Class Counsel;
- 22 4. Unpaid wages and compensation, and statutory penalties, according to proof;
- 23 5. Restitution of all compensation due, including but not limited to wages and benefits as a
24 result of Defendants' unlawful and unfair business practices, according to proof;
- 25 6. Preliminary and permanent injunctions enjoining and restraining Defendants from
26 continuing the unfair and unlawful business practices set forth above, and requiring the
27 establishment of appropriate and effective policies, procedures, and practices in place to
28 prevent future violations, including the maintenance of records that comply with California
Labor Code section 226 and the applicable Wage Order(s);
7. Declaratory relief;

- 1 8. Liquidated damages pursuant California Labor Code section 1194.2, for Defendants’
- 2 violations of the minimum wage provisions of California Labor Code section 1197,
- 3 according to proof;
- 4 9. Reasonable attorneys’ fees and costs pursuant to, *inter alia*, California Labor Code sections
- 5 218.5, 226, 1194, 2699 and 2802, and California Code of Procedure section 1021.5;
- 6 10. Interested accrued on damages and penalties, including pre-judgment interest, pursuant to,
- 7 *inter alia*, California Labor Code sections 218.6; 246(a), 1194, and 1197 , and any other
- 8 applicable statute.
- 9 11. Civil penalties pursuant to California Labor Code § 558;
- 10 12. Penalties pursuant to California Labor Code § 1198.5(k);
- 11 13. Exemplary and punitive damages;
- 12 14. For penalties under Labor Code §§ 2698-2699 and 2699.5;
- 13 15. For such other and further relief as the court deems just and proper.

14 DATED: May 19, 2023

LAW OFFICES OF FARRAH MIRABEL

15 BY: /s/ Farrah Mirabel
16 Farrah Mirabel, Esq.
17 ATTORNEY FOR PLAINTIFFS
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EXHIBIT “A”

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jerry Creek Dairy
7871 Houston Ave.
Hanford, CA 93230



9590 9402 7655 2122 3640 92

2. Article Number (Transfer from service label)

7019 2970 0001 1164 8703

COMPLETE THIS SECTION ON DELIVERY**A. Signature****X**☐ Agent☒ Addressee**B. Received by (Printed Name)**

LOBI ALVAS

C. Date of Delivery

2-23-23

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☒ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®

- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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(over \$500)

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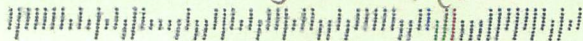
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United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

LAW OFFICES OF Farrah Mirabel
1070 Stradella Rd.
LOS ANGELES, CA 90077

Re: FGA NOTICE: Rogelio Silva Adalberto
Martinez v. Jersey Creek Dairy



Law Offices of
Farrah Mirabel
Fmesq@mirabel.com
1070 Stradella Rd.
Los Angeles, California 90077
Tel (714) 972-0707 Fax (949) 417-1796

February 20, 2023

via **CERTIFIED MAIL to DEFENDANT**
and ONLINE filing with LWDA

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

Jersey Creek Dairy
7871 HOUSTON AVENUE
HANFORD CA 93230

In Re PAGA NOTICE: In Re Rogelio Silva, Adalberto Martinez, v. Jersey Creek Dairy

Dear PAGA Administrator:

Our firm represents the interests of **Rogelio Silva, Adalberto Martinez** (Plaintiffs), employees of **Jersey Cree Dairy** (referred to as the "Defendant"). Plaintiffs were employed by Defendant as follows:

Rogelio Silva: 5/2022 to 10/2022, Maternity
Adalberto Martinez: 3/2022 to 7/2022, Milking cows

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiffs and all other Defendant's employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

1. **Violation of Labor Code § 226.7(a) (Missed Rest Breaks);**
2. **Violation of Labor Code § 226.7, 512 and 1198 (Missed Meal Breaks);**
3. **Violation of Labor Code §1194 & §1197 (Failure to Pay Minimum Wages);**

4. **Violation of Labor Code §510 and 1194, 1198 (Failure to Pay All Overtime Worked);**
5. **Violation of Labor Code § 204 (Failure to Pay All Wages Earned);**
6. **Violation of Labor Code § 226, 1174, 1198.5 and 226, (Failure to Keep Records, Improper Wage Statements and maintain accurate personnel and payroll records);**
7. **Violation of Labor Code § 201-203 (Failure to Pay Wages Upon Separation);**
8. **Violation of Labor Code § 2802 (Failure To Reimburse Required Business Expenses);**

During the relevant timeframe, Defendant employed Plaintiffs as non-exempt hourly employees. Plaintiffs were employed as laborers to perform various jobs such as milking cows and helping cows to birth.

Their superiors, Bud, Francisco Bobadilla, were not allowing them to take any rest breaks for full day of work which lasted minimum of 4 hours. Plaintiffs were hired to work shifts of over four hours, up but were not allowed to take a ten-minute, uninterrupted rest break for each 4 hour shift. Plaintiffs worked during the rest periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent.

Defendant failed to compensate Plaintiffs at the required rate for each occasion in which Defendant failed to provide rest breaks. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiffs and other employees to take their rest breaks during each of the 4 hour shifts.

Also, during their employment, Plaintiffs did not receive a thirty-minute, uninterrupted, off-duty meal break for every shift they worked that lasted more than five hours. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiffs to take uninterrupted meal breaks every 5 hours. When they were working more than 10 hours, they never got a second meal break either. Also, Plaintiffs' meal breaks were interrupted by their superiors.

Plaintiffs and other employees received wages and wage statements which did not account for all the hours worked and did not account for the premiums due to employees for the missed breaks, nor accounted for overtime pay for hours employees worked. When Plaintiffs worked more than 40 hours a week, they were not paid over time for all the hours worked more than 40 hours per week.

Therefore, Plaintiffs claim that Defendant did not provide them and all other past and present employees with uninterrupted rest and meal breaks. Defendant is understaffed and cannot possibly provide its employees including Plaintiffs with their statutory breaks. Furthermore, Plaintiffs claim that the past and present employees did not receive an hour of premium pay, for each missed break, for all days they did not receive a proper rest or meal break. As a result, Defendant failed to pay its employees for all wages earned.

Defendant failed to maintain accurate payroll records, such that Plaintiffs were given wage statements which were inaccurate and Plaintiffs were not paid for all their wages and overtime compensation.

Defendant did not issue an accurate final paycheck to Plaintiffs in accordance with the timeframes prescribed by law.

Plaintiffs claim on their own behalf and also on behalf of all past and present employees that they worked in excess of statutory hours per week and did not receive compensation for all the hours worked and were not paid overtime.

Plaintiffs claim that because Defendant did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest and meal break, and failed to pay them overtime for all hours worked, the employees' wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiffs claim that Defendant provided all its past and present employees with improper wage statements.

Plaintiffs claim that Defendant intentionally discriminated against them and other employees because they are Hispanic immigrant, non sophisticated laborers from Southern America with no knowledge of labor law and Defendant purposefully hires them to exploit them and take advantage of them by underpaying their wages, without getting accurate overtime payment. Plaintiffs were discouraged from taking sick days and were told that if they needed sick days, they had to prove it by having medical proof.

Moreover, Defendant failed to pay timely accurate paycheck upon the separation of the employees. Therefore, Plaintiffs also claim a violation of Labor Code section 201-203 on behalf of all employees who stopped working for the Defendant.

Plaintiffs claim that Defendant's conduct, as stated herein, including not keeping track of actual working hours and meal periods, not paying its employees all wages owed, including wages for all hours worked, overtime, missed rest and meal breaks, and not providing its employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, has been unfair, unlawful, and harmful to all its past and present employees, including Plaintiffs, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

In connection with his PAGA claims, Plaintiffs seek PAGA penalties from at least one year prior to the date of this Notice and ongoing (the "PAGA Period"). Plaintiffs seek to represent the following groups of aggrieved employees:

a. The "Aggrieved Employees":

All non-exempt individuals who are or were California residents for state tax purposes and who are or were employed by Defendants as hourly

employees in the State of California and who worked one or more shifts of (3.5) hours or longer during the PAGA Period.

i. The “Overtime Aggrieved Employees”:

All Aggrieved Employees who worked more than 8 hours in a workday or more than 40 hours in a workweek for Defendants during the PAGA Period;

ii. The “Rest Break Aggrieved Employees”:

All Aggrieved Employees who did not receive their duty free rest break from Defendants during the PAGA Period;

iii. The “Meal Break Aggrieved Employees”:

All Aggrieved Employees who did not receive their duty free meal break from Defendants during the PAGA Period;

iv. The “Wage Statement Aggrieved Employees”:

All Aggrieved Employees who were issued one or more wage statements from Defendants during the PAGA Period;

v. The “Waiting Time Penalty Aggrieved Employees”:

All Aggrieved Employees whose employment with Defendants terminated during the PAGA Period;

vi. The “Reimbursement Aggrieved Employees”:

All Aggrieved Employees who did not receive reimbursement for work-related personal cell-phone expenses from Defendants and payment for Aggrieved employees’ such as boots, helmets, gloves and ear plugs during the PAGA Period

DEFENDANT’S OVERTIME VIOLATIONS

Labor Code § 510 provides that any work in excess of eight hours on any day, as well as all hours worked on the seventh consecutive day of a workweek, shall be compensated at the rate of no less than 1.5 times the regular rate of pay. See also Section 3(A) of IWC Wage Order No. 16.

Here, Defendant hired Plaintiffs and the Overtime Aggrieved Employees to work as laborers in California and to work on various projects of Defendants. Plaintiffs and the Overtime Aggrieved Employees often worked more than 8 hours and over 40 hours per week. In fact, Plaintiffs and the Aggrieved Employees submitted daily and weekly time logs showing daily overtime. The same time records also show that Plaintiffs and the Overtime Aggrieved Employees routinely worked over 40 hours per week. Despite these records, Defendants’ wage statements issued to Plaintiffs and the Aggrieved Employees

intentionally misstated and under-reported hours worked in a misguided attempt to cover up this failure to pay overtime.

Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order, Defendant did not accurately pay Plaintiffs and the Overtime Aggrieved Employees any overtime wages corresponding to one and a half time of Plaintiffs and the Overtime Aggrieved Employees' hourly rates of pay. Plaintiffs and the Overtime Aggrieved Employees often worked eight hours per day and often worked over 40 hours per week. Defendant violated Labor Code § 510 by failing to pay Plaintiffs and Aggrieved Employees their overtime wages at the applicable overtime rates, including daily overtime and weekly overtime, and instead merely paid Plaintiffs and the Overtime Aggrieved Employees straight time wages for all hours worked.

DEFENDANTS' REST PERIOD VIOLATIONS

Under California law, employees are entitled to ten minute duty free rest breaks for each 4 hours of work, or major fraction thereof. See the applicable IWC Wage Order, Section 12 and Labor Code section 226.7.

Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time or the proper timing for rest breaks called for under the law (as specified in the applicable Wage Order), "it has violated the wage order and is liable." The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

Here, Plaintiffs and the Rest Break Aggrieved Employees were not provided their first timely ten- minute duty-free rest break. Furthermore, because Defendant was understaffed, Plaintiffs and the Rest Break Aggrieved Employees were under time pressures to finish their work-related tasks on time, which was often rest break-preclusive.

DEFENDANTS' MEAL BREAK VIOLATIONS

Section 512 of the Labor Code and Section 11 of the applicable IWC Wage Order state that California employers must provide 30-minute duty-free meal breaks on or before the 5th and 10th hour of employees shifts. California employers are obligated to keep records of meal breaks taken pursuant to Section 7(A) of the applicable IWC Wage Order.

Here, Plaintiffs and the Meal Break Aggrieved Employees were not provided their first timely thirty- minute duty-free meal break. Furthermore, because Defendant was understaffed, Plaintiffs and the Meal Break Aggrieved Employees were under time pressures to finish their work-related tasks on time, which was often full thirty minute meal break-preclusive.

DEFENDANTS' WAGE STATEMENT VIOLATIONS

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (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 only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (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...

Due to, *inter alia*, Defendants' failure to pay Plaintiffs and the other Wage Statement Aggrieved Employees accurate overtime payments and rest and meal break premiums, the wage statements issued by Defendants to Plaintiffs and the other Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Defendants' violation of Labor Code § 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiffs or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement").

Defendants' failure to furnish accurate itemized wage statements has caused Plaintiffs and the other Wage Statement Aggrieved Employees to incur economic damages in that they were not aware that they were owed and not paid compensation for their time spent on

overtime work and statutory rest and meal breaks. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 (“If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met”); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not including, inter alia, total hours worked giving rise to claims under both Section 226 and for PAGA penalties); *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 960-961 (2005) (reversing summary judgment for defendants where wage statements did not “give an accurate report of the hours plaintiff worked, at least not on its face”); Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages earned by the employee during the pay period).

Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney’s fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

Aggrieved Employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). *See Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

Further and in addition to the penalties outlined above, Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide Plaintiffs and the other Wage Statement Aggrieved Employees with accurate itemized wage statements. Accordingly, Defendants are additionally liable for Labor Code § 226.3 penalties for their violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code §

226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.”).¹

DEFENDANTS’ FAILURE TO PAY WAGES ON A TIMELY BASIS

Labor Code § 204 expressly requires that “[a]ll wages...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.” Pursuant to Labor Code § 204(d), these requirements are “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.

Due to Defendants’ failure to pay Plaintiffs and the other Wage Statement Aggrieved Employees for overtime wages, rest period premiums owed,² Defendants violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail

¹ *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326, *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7-9, 2011 WL 2434043; *Willis v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

² Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3-4 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts owed under section 226.7.”). The issue is currently before the California Supreme Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

above, Plaintiffs and the other Aggrieved Employees are entitled to recover penalties under Labor Code § 210 through PAGA.

DEFENDANT'S FAILURE TO REIMBURSE BUSINESS EXPENSES

Pursuant to Labor Code § 2802(a) “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer....” The purpose of this statute is “to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative history from the 2000 amendment to the statute). Labor Code Section 2802(c) also clarifies that “the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

Specifically, under Labor Code § 2802, employers must reimburse employees for required work-related use of personal cell phones, regardless of whether they incur any additional out-of-pocket expense from that work-related use. *See Cochran v. Schwan’s Home Service*, 228 Cal. App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement class action). *Cochran* held that “[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. . . . It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. . . . To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed.” *Id.* at 1144-45 (emphasis added); *see also Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

The employer’s obligation to reimburse business-related expenses arises when the employer “knew or should have known” that its employees have incurred a business-related expense. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting the “knew or should have known” standard from *RadioShack*). Notably, these claims are not waivable per Section 2804 of the Labor Code.

Under Labor Code § 2802, where, as here, an employer expects Plaintiffs and the Reimbursement Aggrieved Employees to use their cell phone for work, then Defendant must reimburse employees.

Accordingly, Defendant violated Labor Code § 2802 and continue to do so by failing to reimburse Plaintiffs and all other Reimbursement Aggrieved Employees for all work-

related charges they incurred in connection with their job duties. By failing to reimburse Plaintiffs and the Reimbursement Aggrieved Employees for their personal expenses incurred for work-related purposes, Defendant violated Labor Code § 2802, as well as the applicable IWC Wage Order.

DEFENDANT'S FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Due to Defendant's faulty policies described above, including its failure to pay for overtime wages and rest period premiums, Defendants violated Labor Code § 203, for those employees whose employment ended within the last one year and ongoing (i.e., the Waiting Time Aggrieved Employees) by willfully failing to pay them all wages due upon the termination of their employment. Moreover, Plaintiffs and the Reimbursement Aggrieved Employees did not receive their last paystub within 72 hours of their termination.

This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleges violations as to any locations or employees who worked at any time in the state of California. Plaintiffs can be contacted through their attorney of record:

Farrah Mirabel, Esq.
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
Los Angeles, California 90077

Plaintiffs and other similarly situated individuals, past and present employees, may also be entitled to penalties pursuant to Labor Code section 2699, et seq.

On behalf of Plaintiffs, and all other past and present employees, our office will be filing a civil complaint against Defendant, alleging the above causes of action including PAGA claim and request damages pursuant to but not limited to the following labor code sections ***98.6, 201-205, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 233, 234, 246, 246.5, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1198-1199.5, 2802 and 2698-2699, 2699.5 and 2802 and applicable IWC.***

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our

Law Offices of Farrah Mirabel

CALIFORNIA LWDA
Private Attorneys General Act Notice
PAGA NOTICE LETTER
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intent to pursue a PAGA representative action (and a class action) against Defendant seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiffs individually, on a class basis, and on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the putative class and the aggrieved employees. If Defendant is interested in attempting to resolve this matter, including the PAGA claims, please have counsel contact us by **March 24, 2023**, so that we may discuss an informal discovery plan and the possibility of early mediation.

Very truly yours,

LAW OFFICES OF FARRAH MIRABEL
/s/ Farrah Mirabel
Farrah Mirabel, Esq.

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May 19, 2023

via EMAIL to COUNSEL FOR
DEFENDANT and ONLINE filing with LWDA
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Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

Jersey Creek Dairy, Inc.
7871 HOUSTON AVENUE
HANFORD CA 93230

In Re AMENDED PAGA NOTICE: In Re Rogelio Silva, Adalberto Martinez, v. Jersey Creek Dairy Inc.

Case Number: LWDA-CM-941077-23

Dear PAGA Administrator:

Our firm represents the interests of **Rogelio Silva, Adalberto Martinez** (Plaintiffs), employees of **Jersey Creek Dairy Inc.** (referred to as the “Defendant”). Plaintiffs were employed by Defendant as follows:

Rogelio Silva: 5/2022 to 10/2022, Maternity
Adalberto Martinez: 3/2022 to 7/2022, Milking cows

On February 20, 2023, Plaintiffs served and filed a PAGA notice which was for employer/Defendant Jersey Cree Dairy Inc., however the word Inc. was inadvertently omitted from **Jersey Creek Dairy Inc.** but Defendant indeed received the PAGA notice. This amended notice includes the word Inc. and also adds additional claims.

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiffs and all other Defendant's employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

1. **Violation of Labor Code § 226.7(a) (Missed Rest Breaks);**
2. **Violation of Labor Code § 226.7, 512 and 1198 (Missed Meal Breaks);**
3. **Violation of Labor Code §1194 & §1197 (Failure to Pay Minimum Wages);**
4. **Violation of Labor Code §510 and 1194, 1198 (Failure to Pay All Overtime Worked);**
5. **Violation of Labor Code § 204 (Failure to Pay All Wages Earned);**
6. **Violation of Labor Code § 226, 1174, 1198.5 and 226, (Failure to Keep Records, Improper Wage Statements and maintain accurate personnel and payroll records);**
7. **Violation of Labor Code § 201-203 (Failure to Pay Wages Upon Separation);**
8. **Violation of Labor Code § 2802 (Failure To Reimburse Required Business Expenses);**
9. **Violation of Labor Code §§246(a), 248.5 (Failure to Pay for Sick Days);**

During the relevant timeframe, Defendant employed Plaintiffs as non-exempt hourly employees. Plaintiffs were employed as laborers to perform various jobs such as milking cows and helping cows to birth.

Their superiors, Bud, Francisco Bobadilla, were not allowing them to take any rest breaks for full day of work which lasted minimum of 4 hours. Plaintiffs were hired to work shifts of over four hours, up but were not allowed to take a ten-minute, uninterrupted rest break for each 4 hour shift. Plaintiffs worked during the rest periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent.

Defendant failed to compensate Plaintiffs at the required rate for each occasion in which Defendant failed to provide rest breaks. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiffs and other employees to take their rest breaks during each of the 4 hour shifts.

Also, during their employment, Plaintiffs did not receive a thirty-minute, uninterrupted, off-duty meal break for every shift they worked that lasted more than five hours. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiffs to take uninterrupted meal breaks every 5 hours. When they were working more than 10 hours, they never got a second meal break either. Also, Plaintiffs' meal breaks were interrupted by their superiors.

Plaintiffs and other employees received wages and wage statements which did not

account for all the hours worked and did not account for the premiums due to employees for the missed breaks, nor accounted for overtime pay for hours employees worked. When Plaintiffs worked more than 40 hours a week, they were not paid over time for all the hours worked more than 40 hours per week.

Therefore, Plaintiffs claim that Defendant did not provide them and all other past and present employees with uninterrupted rest and meal breaks. Defendant is understaffed and cannot possibly provide its employees including Plaintiffs with their statutory breaks. Furthermore, Plaintiffs claim that the past and present employees did not receive an hour of premium pay, for each missed break, for all days they did not receive a proper rest or meal break. As a result, Defendant failed to pay its employees for all wages earned.

Defendant failed to maintain accurate payroll records, such that Plaintiffs were given wage statements which were inaccurate and Plaintiffs were not paid for all their wages and overtime compensation.

Defendant did not issue an accurate final paycheck to Plaintiffs in accordance with the timeframes prescribed by law.

Plaintiffs claim on their own behalf and also on behalf of all past and present employees that they worked in excess of statutory hours per week and did not receive compensation for all the hours worked and were not paid overtime.

Plaintiffs claim that because Defendant did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest and meal break, and failed to pay them overtime for all hours worked, the employees' wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiffs claim that Defendant provided all its past and present employees with improper wage statements.

Plaintiffs were demanded to fill out and sign a daily time sheet which showed a pre-typed examples of exactly 10 minutes rest breaks and exactly 30 minutes meal breaks despite Plaintiffs not having been able to take uninterrupted 10 minutes rest breaks and 30 minutes meal breaks, they were required to do so and due to their fearing termination and retaliation, Plaintiffs complied but voiced their objection which resulted in their termination.

Plaintiffs claim that Defendant intentionally discriminated against them and other employees because they are Hispanic immigrant, non-sophisticated laborers from Southern America with no knowledge of labor law and Defendant purposefully hires them to exploit them and take advantage of them by underpaying their wages, without getting accurate overtime payment.

Plaintiffs were discouraged from taking sick days and were told that if they needed sick days, they had to prove it by having medical proof. They were not paid for the days they could not work due to being sick.

During his employment, Plaintiff Silva objected to illegal employment of inexperienced minors who were committing animal abuse and were endangering others' lives.

During his employment, Plaintiff Adalberto Martinez complained to the Defendants about another employee, worker, Francisco Murillo, who was carrying a knife and displayed violent behavior which concerned and scared Plaintiff. He also reported animal abuse by that employee, Francisco Murillo. He reported it to his supervisor Francisco (Pancho) Bobadilla the fact that he saw Murillo twisting/breaking the tails of cows. He witnessed. Murillo screaming and spooking cows. He believed that Murillo's conduct was animal abuse

Moreover, Defendant failed to pay timely accurate paycheck upon the separation of the employees. Therefore, Plaintiffs also claim a violation of Labor Code section 201-203 on behalf of all employees who stopped working for the Defendant.

Plaintiffs claim that Defendant's conduct, as stated herein, including not keeping track of actual working hours and meal periods, not paying its employees all wages owed, including wages for all hours worked, overtime, missed rest and meal breaks, and not providing its employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, has been unfair, unlawful, and harmful to all its past and present employees, including Plaintiffs, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

In connection with his PAGA claims, Plaintiffs seek PAGA penalties from at least one year prior to the date of this Notice and ongoing (the "PAGA Period"). Plaintiffs seek to represent the following groups of aggrieved employees:

a. The "Aggrieved Employees":

All non-exempt individuals who are or were California residents for state tax purposes and who are or were employed by Defendants as hourly employees in the State of California and who worked one or more shifts of (3.5) hours or longer during the PAGA Period.

i. The "Overtime Aggrieved Employees":

All Aggrieved Employees who worked more than 8 hours in a workday or more than 40 hours in a workweek for Defendants during the PAGA Period;

ii. The "Rest Break Aggrieved Employees":

All Aggrieved Employees who did not receive their duty free rest break from Defendants during the PAGA Period;

iii. The "Meal Break Aggrieved Employees":

All Aggrieved Employees who did not receive their duty free meal break from Defendants during the PAGA Period;

iv. The “Wage Statement Aggrieved Employees”:

All Aggrieved Employees who were issued one or more wage statements from Defendants during the PAGA Period;

v. The “Waiting Time Penalty Aggrieved Employees”:

All Aggrieved Employees whose employment with Defendants terminated during the PAGA Period;

vi. The “Reimbursement Aggrieved Employees”:

All Aggrieved Employees who did not receive reimbursement for work-related personal cell-phone expenses from Defendants and payment for Aggrieved employees’ such as usage of their cell phone, boots, gloves and drinking water during the PAGA Period

DEFENDANT’S OVERTIME VIOLATIONS

Labor Code § 510 provides that any work in excess of eight hours on any day, as well as all hours worked on the seventh consecutive day of a workweek, shall be compensated at the rate of no less than 1.5 times the regular rate of pay. See also Section 3(A) of IWC Wage Order No. 16.

Here, Defendant hired Plaintiffs and the Overtime Aggrieved Employees to work as laborers in California and to work on various projects of Defendants. Plaintiffs and the Overtime Aggrieved Employees often worked more than 8 hours and over 40 hours per week. In fact, Plaintiffs and the Aggrieved Employees submitted daily and weekly time logs showing daily overtime. The same time records also show that Plaintiffs and the Overtime Aggrieved Employees routinely worked over 40 hours per week. Despite these records, Defendants’ wage statements issued to Plaintiffs and the Aggrieved Employees intentionally misstated and under-reported hours worked in a misguided attempt to cover up this failure to pay overtime.

Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order, Defendant did not accurately pay Plaintiffs and the Overtime Aggrieved Employees any overtime wages corresponding to one and a half time of Plaintiffs and the Overtime Aggrieved Employees’ hourly rates of pay. Plaintiffs and the Overtime Aggrieved Employees often worked eight hours per day and often worked over 40 hours per week. Defendant violated Labor Code § 510 by failing to pay Plaintiffs and Aggrieved Employees their overtime wages at the applicable overtime rates, including daily overtime and weekly overtime, and instead merely paid Plaintiffs and the Overtime Aggrieved Employees straight time wages for all hours worked.

DEFENDANTS' REST PERIOD VIOLATIONS

Under California law, employees are entitled to ten minute duty free rest breaks for each 4 hours of work, or major fraction thereof. See the applicable IWC Wage Order, Section 12 and Labor Code section 226.7.

Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time or the proper timing for rest breaks called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

Here, Plaintiffs and the Rest Break Aggrieved Employees were not provided their first timely ten- minute duty-free rest break. Furthermore, because Defendant was understaffed, Plaintiffs and the Rest Break Aggrieved Employees were under time pressures to finish their work-related tasks on time, which was often rest break-preclusive.

DEFENDANTS' MEAL BREAK VIOLATIONS

Section 512 of the Labor Code and Section 11 of the applicable IWC Wage Order state that California employers must provide 30-minute duty-free meal breaks on or before the 5th and 10th hour of employees shifts. California employers are obligated to keep records of meal breaks taken pursuant to Section 7(A) of the applicable IWC Wage Order.

Here, Plaintiffs and the Meal Break Aggrieved Employees were not provided their first timely thirty- minute duty-free meal break. Furthermore, because Defendant was understaffed, Plaintiffs and the Meal Break Aggrieved Employees were under time pressures to finish their work-related tasks on time, which was often full thirty minute meal break-preclusive.

DEFENDANTS' WAGE STATEMENT VIOLATIONS

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;

- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (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 only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (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...

Due to, *inter alia*, Defendants' failure to pay Plaintiffs and the other Wage Statement Aggrieved Employees accurate overtime payments and rest and meal break premiums, the wage statements issued by Defendants to Plaintiffs and the other Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Defendants' violation of Labor Code § 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiffs or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement").

Defendants' failure to furnish accurate itemized wage statements has caused Plaintiffs and the other Wage Statement Aggrieved Employees to incur economic damages in that they were not aware that they were owed and not paid compensation for their time spent on overtime work and statutory rest and meal breaks. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not including, *inter alia*, total hours worked giving rise to claims under both Section 226 and for PAGA penalties); *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 960-961 (2005) (reversing summary judgment for defendants where wage statements did not "give an accurate report of the hours plaintiff worked, at least not on its face"); Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages earned by the employee during the pay period).

Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

Aggrieved Employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). *See Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above."); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that "for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.").

Further and in addition to the penalties outlined above, Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As explained in detail above, Defendants failed to provide Plaintiffs and the other Wage Statement Aggrieved Employees with accurate itemized wage statements. Accordingly, Defendants are additionally liable for Labor Code § 226.3 penalties for their violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 ["the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim."]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) ("Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.").¹

DEFENDANTS' FAILURE TO PAY WAGES ON A TIMELY BASIS

Labor Code § 204 expressly requires that "[a]ll wages...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." Pursuant to Labor Code § 204(d), these requirements are "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.

¹ *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D. Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326, *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7-9, 2011 WL 2434043; *Willis v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

Due to Defendants' failure to pay Plaintiffs and the other Wage Statement Aggrieved Employees for overtime wages, rest period premiums owed,² Defendants violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

Labor Code § 210 provides that "in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld." As a result of the faulty compensation policies and practices described in detail above, Plaintiffs and the other Aggrieved Employees are entitled to recover penalties under Labor Code § 210 through PAGA.

DEFENDANT'S FAILURE TO REIMBURSE BUSINESS EXPENSES

Pursuant to Labor Code § 2802(a) "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...." The purpose of this statute is "to prevent employers from passing their operating expenses on to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative history from the 2000 amendment to the statute). Labor Code Section 2802(c) also clarifies that "the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

² Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying the defendant's motion for summary judgment on the plaintiff's claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang's China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 "concerned only whether 'a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5'"); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant's motion for summary judgment because "the premium payments due under section 226.7 are to be considered "wages" for purposes of sections 203 and 226.7"]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3-4 [distinguishing *Kirby*, and finding "Plaintiffs' section 203 claim for failure to pay wages...can be based on amounts owed under section 226.7."]. The issue is currently before the California Supreme Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

Specifically, under Labor Code § 2802, employers must reimburse employees for required work-related use of personal cell phones, regardless of whether they incur any additional out-of-pocket expense from that work-related use. *See Cochran v. Schwan's Home Service*, 228 Cal. App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement class action). *Cochran* held that “[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. . . . It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. . . . To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed.” *Id.* at 1144-45 (emphasis added); *see also Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

The employer’s obligation to reimburse business-related expenses arises when the employer “knew or should have known” that its employees have incurred a business-related expense. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting the “knew or should have known” standard from *RadioShack*). Notably, these claims are not waivable per Section 2804 of the Labor Code.

Under Labor Code § 2802, where, as here, an employer expects Plaintiffs and the Reimbursement Aggrieved Employees to use their cell phone for work, then Defendant must reimburse employees.

Accordingly, Defendant violated Labor Code § 2802 and continue to do so by failing to reimburse Plaintiffs and all other Reimbursement Aggrieved Employees for all work-related charges they incurred in connection with their job duties. By failing to reimburse Plaintiffs and the Reimbursement Aggrieved Employees for their personal expenses incurred for work-related purposes, Defendant violated Labor Code § 2802, as well as the applicable IWC Wage Order.

DEFENDANT’S FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Due to Defendant’s faulty policies described above, including its failure to pay for overtime wages and rest period premiums, Defendants violated Labor Code § 203, for those employees whose employment ended within the last one year and ongoing (i.e., the Waiting

Time Aggrieved Employees) by willfully failing to pay them all wages due upon the termination of their employment. Moreover, Plaintiffs and the Reimbursement Aggrieved Employees did not receive their last paystub within 72 hours of their termination.

This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleges violations as to any locations or employees who worked at any time in the state of California. Plaintiffs can be contacted through their attorney of record:

Farrah Mirabel, Esq.
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
Los Angeles, California 90077

Plaintiffs and other similarly situated individuals, past and present employees, may also be entitled to penalties pursuant to Labor Code section 2699, et seq.

On behalf of Plaintiffs, and all other past and present employees, our office will be filing a civil complaint against Defendant, alleging the above causes of action including PAGA claim and request damages pursuant to but not limited to the following labor code sections ***98.6, 201-205, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 233, 234, 246, 246.5, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1198-1199.5, 2802 and 2698-2699, 2699.5 and applicable IWC.***

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendant seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiffs individually, on a class basis, and on behalf of the Aggrieved Employees, as defined above.

Very truly yours,

LAW OFFICES OF FARRAH MIRABEL
/s/ Farrah Mirabel
Farrah Mirabel, Esq.