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10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 ERIC ENCISO, as a private
13 attorney general and proxy for the
14 State of California,

15 Plaintiff,
16 vs.

17 CAMINO REAL FOODS, INC., a
18 California corporation; and DOES 1
19 through 10, inclusive,

20 Defendants.

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Superior Court of California,
County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By Y. Tarasyuk, Deputy Clerk

Case No. 23STCV25061

REPRESENTATIVE ACTION COMPLAINT

- (1) Claim for Civil Penalties for Violation of
California's Private Attorneys General Act of 2004
(Labor Code § 2698, *et seq.*)

1 Plaintiff Eric Enciso, as a private attorney general and proxy for the State of California,
2 alleges on information and belief as follows:

3 **INTRODUCTION**

4 1. This is a representative action under the Labor Code Private Attorneys General Act
5 of 2004, Labor Code Section 2698, *et seq.* (“PAGA”) that challenges systemic employment practices
6 resulting in violations of the California Labor Code against all current and former non-exempt and
7 exempt employees of Camino Real Foods, Inc. and all other non-exempt and exempt employees
8 employed by staffing agencies and/or labor contractors who were assigned to work, and who did
9 work, at Camino Real Foods, Inc’s facility located at 2638 East Vernon Avenue Vernon, CA 90058
10 during the relevant period.

11 2. The Labor Code is broadly remedial in nature. Its laws serve an important public
12 interest in establishing minimum working conditions and requirements in California. These labor
13 standards protect employees from onerous terms and conditions of employment or exploitation by
14 employers who have superior economic and bargaining power. PAGA was enacted to improve the
15 enforcement of California’s Labor Code by empowering an aggrieved employee to bring an
16 enforcement action as a private attorney general and proxy for the State of California for an
17 employer’s violations of California labor law.

18 3. As relevant here, the PAGA was also enacted to improve the enforcement of the
19 California Occupational Safety and Health Act (“Cal/OSHA”) and whistleblower protection laws
20 that ensure, respectively, that employers provide safe and healthy working environments for their
21 employees, and do not retaliate and/or discriminate against employees who voice concerns about
22 unsafe and unhealthy worksites, or otherwise unlawful working conditions or workplace conduct.

23 4. By this action, Plaintiff seeks civil penalties and any other available relief under the
24 PAGA on behalf of the State of California, Plaintiff and other current and former non-exempt and
25 exempt employees of Camino Real Foods, Inc. and all other non-exempt and exempt employees
26 employed by staffing agencies and/or labor contractors who were assigned to work, and who did
27 work, at Camino Real Foods, Inc’s facility located at 2638 East Vernon Avenue Vernon, CA 90058
28 during the relevant period.

1 5. This Complaint seeks civil penalties and other relief pursuant to the PAGA for
2 Defendants' violations of Labor Code Sections 98.6, 232.5, 1102.5, 6310, 6400, 6401, 6401.7, 6402,
3 6403, 6404, 6406, and 6407.

4 **THE PARTIES**

5 6. Plaintiff Eric Enciso ("Plaintiff") is an individual who resided in Los Angeles County,
6 California, during his employment by Defendant Camino Real Foods, Inc., and who currently resides
7 in San Diego County.

8 7. Defendant Camino Real Foods, Inc. ("Camino Real") is and at all times relevant to
9 this Complaint was a California corporation with its principal place of business located in Los
10 Angeles County, California.

11 8. Plaintiff is unaware of the true names and capacities, whether individual, corporate,
12 associate, or otherwise of the defendants sued herein as Does 1 through 10. Plaintiff therefore sues
13 those defendants by fictitious names. Plaintiff will amend this Complaint to show the true names and
14 capacities of each Doe defendant when such information has been ascertained.

15 9. Except as otherwise noted, a reference to "Defendants" in this Complaint shall include
16 the named Defendant and the Doe defendants.

17 10. Upon information and belief, Defendants acted as the employers and/or joint
18 employers of Plaintiff, and directly or indirectly, or through actual agents, ostensible agents and/or
19 other persons, employed Plaintiff, and exercised control over Plaintiff's wages, hours, and working
20 conditions. Defendants' control included, but was not limited to, the authority to hire and fire, assign
21 work tasks and engage in day-to-day supervision.

22 11. Upon information and belief, at all relevant times, each of the Defendants is and was
23 the agent, partner, joint venturer, principal, alter ego, employee, co-conspirator, and/or aider or
24 abettor of each of the other Defendants, and in doing the things alleged was acting within the course
25 and scope of their agency or employment and with the knowledge and consent of each of the other
26 Defendants. Upon information and belief, the acts and conduct of each of the Defendants was known
27 to, and authorized and ratified by, the remaining Defendants, and each of the Defendants is jointly
28 and severally responsible and liable for the damages alleged herein.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over all causes of action alleged in this Complaint pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other courts.” Plaintiff’s claims arise under the laws of the State of California, and are not statutorily assigned to any other trial court.

13. The amount in controversy under this Complaint exceeds the minimal jurisdictional limit of the Superior Court and will be established according to proof at trial.

14. The Court has personal jurisdiction over the Defendants because they are either residents of California, are doing business in California, have sufficient minimum contacts in California, and/or otherwise intentionally avail themselves of the California market as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

15. Venue is proper in this Court pursuant to Code of Civil Procedure Sections 395 and 395.5 because the principal place of business of Defendant Camino Real is located in Los Angeles County, Plaintiff resided in Los Angeles County during the relevant period, and the liability for the alleged wrongs described herein arose in Los Angeles County. Venue is also proper in this Court because “venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred.” *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County* (Cal. Ct. App., Feb. 17, 2021) No. A160523, 2021 WL 613700, at *2. All the Aggrieved Employees worked and the alleged Labor Code violations occurred in Los Angeles County.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. On June 28, 2023, Plaintiff provided written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and Division of Occupational Health and Safety (“Cal/OSHA”) and by certified mail to Defendant of the specific provisions of the Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with Labor Code Section 2699.3. A true and correct copy of Plaintiff’s June 28, 2023 PAGA Notice is attached hereto as Exhibit 1. The June 28, 2023 PAGA Notice applies to the alleged

violations of Labor Code Sections 98.6, 232.5, 1102.5, 6310.

17. Cal/OSHA did not respond to the Plaintiff's original PAGA Notice within the statutory three-day response period mandated by Labor Code § 6309 for "serious violations," and did not respond to Plaintiff's original PAGA Notice's within the fourteen-day response period mandated by Labor Code § 6309 for "non-serious violations."

18. On July 24, 2023, pursuant to Labor Code § 2699.3(b)(2)(B)(ii) and Labor Code § 2699.3(c), Plaintiff provided further written notice by online filing to the LWDA and by certified mail to Defendant of the specific provisions of the Labor Code alleged to have been violated. A true and correct copy of Plaintiff's July 24, 2023 PAGA Notice is attached hereto as Exhibit 2. The July 24, 2023 PAGA Notice applies to Labor Code Sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407.

19. As of the filing date of this Complaint, over 65 days have passed since Plaintiff sent both the June 28, 2023 and the July 24, 2023 PAGA Notices, and the LWDA has not responded that it intends to investigate Plaintiff's claims, and Defendants have not cured any "curable" violations.

20. Plaintiff has thus satisfied the administrative prerequisites under Labor Code Sections 2699.3(a), (b) and (c) to recover civil penalties against Defendants, in addition to other remedies, for violations of Labor Code Sections 98.6, 232.5, 1102.5, 6310, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407.

DEFENDANTS' LIABILITY AS A CLIENT EMPLOYER AND JOINT EMPLOYER

21. Camino Real is responsible for the alleged PAGA violations as to all Aggrieved Employees that worked onsite at their food manufacturing factory in Vernon, California, regardless of whether Camino Real directly employed and/or employs the Aggrieved Employees or whether those Aggrieved Employees are directly employed by staffing agencies and/or labor contractors.

22. Pursuant to Labor Code Section 2810.3, Camino Real serves as the "client employer" of the Aggrieved Employees that work and/or worked at its food manufacturing factory in Vernon, California during the applicable PAGA Period, regardless of whether Camino Real directly employs the workers or whether those workers are directly employed by staffing agencies and/or labor contractors. *See* Labor Code § 2810.3(a) ("Client employer" means a business entity, regardless of

its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor.”).

23. Because Camino Real is the “client employer” within the meaning of Labor Code Section 2810.3, Camino Real cannot shift to any staffing agency or other labor contractor its legal duties and/or liabilities under Labor Code Section 6300, *et seq.* See Labor Code § 2810.3(c)(“A client employer shall not shift to the labor contractor any legal duties or liabilities under Division 5 (commencing with Section 6300) with respect to workers supplied by the labor contractor.”); *In re Walmart Assocs., Inc.* (Cal-OSH App.Bd.) 2022 WL 3011450.

24. In addition, Plaintiff is informed and believes, and thereon alleges, that at all relevant times, Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other Aggrieved Employees because Defendants have:

- a. jointly exercised meaningful control over the work performed by Plaintiff and other Aggrieved Employees;
- b. jointly exercised meaningful control over Plaintiff and other Aggrieved Employees’ wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and other Aggrieved Employees;
- c. jointly required that Plaintiff and other Aggrieved Employees perform work which is an integral part of Defendants’ businesses; and
- d. jointly exercised control over Plaintiff and other Aggrieved Employees as a matter of economic reality in that Plaintiff and other Aggrieved Employees were dependent on Defendants, who shared the power to set the wages of Plaintiff and other Aggrieved Employees and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

GENERAL ALLEGATIONS

25. Defendants employ, manage and/or supervise approximately 500 to 600 workers at their food production plant in Vernon, California.

1 26. Defendants are in the business of selling frozen Mexican-style foods, including
2 burritos and chimichangas, under the Tina's Burrito's brand.

3 27. According to Camino Real's President and CEO Robert Cross, Defendants' workers
4 roll over 1,000,000 burritos a day. Defendants' products are sold at grocery stores and other retailers
5 throughout the United States.

6 28. Defendants employed Plaintiff as a non-exempt Chief Operating Officer ("COO") at
7 Camino Real from January 9, 2023 until April 13, 2023.

8 29. This is a representative action brought on behalf of the State of California and the
9 following individuals:

10 All current and former non-exempt and exempt employees of Camino
11 Real Foods, Inc. and all other non-exempt and exempt employees,
12 employed by staffing agencies and/or labor contractors, who were
13 assigned to work, and who did work, at Camino Real Foods, Inc's
14 facility located at 2638 East Vernon Avenue Vernon, CA 90058, and
15 who worked at least one pay period at Camino Real Foods, Inc's
16 facility located at 2638 East Vernon Avenue Vernon, CA 90058,
17 during the PAGA Period and/or Cal/OSHA PAGA Period (hereafter,
18 "Aggrieved Employees").

19 30. The PAGA Period is defined as the period of time beginning on June 28, 2022, the
20 date that is one year prior to the date of Plaintiff's initial notice letter to the LWDA and Cal/OSHA,
21 and continuing to the present. The PAGA Period applies to the alleged violations of Labor Code
22 Sections 98.6, 232.5, 1102.5, 6310.

23 31. The Cal/OSHA PAGA Period is defined as the period beginning on July 24, 2022, the
24 date that is one year prior to the date of Plaintiff's amended PAGA notice letter to the LWDA and
25 Cal/OSHA, and continuing to the present. The Cal/OSHA PAGA Period applies to the alleged
26 violations of Labor Code Sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407.

27 32. On information and belief, Defendants subjected Plaintiff and other Aggrieved
28 Employees to the same policies, practices and procedures governing the safety and health of
employees, and the safety and health of the Aggrieved Employees' worksite, and uniformly denied
Plaintiff and other Aggrieved Employees the rights afforded to them under Labor Code Sections
98.6, 232.5, 1102.5, 6310, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407.

1 33. Defendants continue to employ Aggrieved Employees in California.

2 34. Defendants operate in a single story, approximately 80,000 square foot factory located
3 in Vernon CA. The main building is approximately 60,000 square feet and consist of the main
4 production floor, kitchen, test kitchen, bakery, small warehouse/staging area, freezers, and office
5 area.

6 35. During Plaintiff's employment, Plaintiff discovered that Defendants' factory in
7 Vernon, California, failed to comply with numerous safety and health laws, codes and regulations.
8 Those violations, in turn, imperil the safety and health of the approximately 500 to 600 employees
9 that work at the factory. Those violations also imperiled the health and safety of Plaintiff during his
10 employment.

11 36. Among other issues, Plaintiff discovered, reported and complained about:

12 a. Defendants' failure to repair its faulty ammonia refrigeration system that endangers
13 the health and safety of workers who are repeatedly exposed to unhealthy and
14 dangerous levels of anhydrous ammonia;

15 b. Defendants' failure to repair a leaky roof, which, during the rainy season, allows dirty,
16 toxic, rust-colored water to leak onto the production floor and food manufacturing
17 equipment; and

18 c. Defendants' failure to respond adequately to the complaints of workers regarding the
19 air quality in the Camino Real factory in Vernon, California, where workers had
20 complained that airborne contaminants had caused them to be sick.

21 37. In addition, Plaintiff discovered, reported, and complained about other unlawful
22 business practices including but not limited to Defendants' failure to repair a water heating system
23 for the water used in the manufacture of food products, a practice that could potentially endanger the
24 health and safety of the consumers of the Tina's Burritos food products manufactured by Camino
25 Real.

26 38. As detailed below, Plaintiff complained to Camino Real's CEO Robert Cross who
27 resides and works in Bentonville, Arkansas. Although CEO Cross makes appearances at the Camino
28 Real factory in Vernon, California, from time to time, CEO Cross is largely an absentee CEO who

operates Camino Real from his corporate office that is located more than 1,500 miles from Camino Real's unsafe and unhealthy factory.

39. Defendants use anhydrous ammonia as the refrigerant in the refrigeration system at the Camino Real factory in Vernon, California.

40. Anhydrous ammonia, when used under pressure as a liquefied refrigerant, can be a significant health hazard if there is a release of the ammonia into the air. Ammonia is corrosive to the skin, eyes and lungs, even at low concentrations in the air. Symptoms of exposure to anhydrous ammonia include skin and eye burns, severe throat pain, and coughing/wheezing. Accidental and/or negligent ammonia releases can cause injuries and death to employees, emergency response personnel, and people in surrounding communities.

41. Exposure to anhydrous ammonia between 5 and 50 ppm can cause headaches, loss of the sense of smell, nausea, and vomiting. Concentrations above 50 ppm result in irritation to the nose, mouth, and throat causing coughing and wheezing. Concentrations of 300 to 500 ppm are immediately dangerous to life.

42. Cal/OSHA regulations establish the maximum permissible time-weighted average exposure limit ("PEL") of anhydrous ammonia for an 8-hour workday at 25 ppm. Cal. Code. Regs. tit. 8, § 5155. Cal/OSHA regulations establish the maximum short term exposure limit ("STEL") for ammonia, expressed as a 15-minute time-weighted average exposure, at 35 ppm. *Id.*

43. Defendants do not advise its employees of Cal/OSHA's PEL and STEL exposure limits for ammonia. Instead, Defendants advise its employees that "people can smell ammonia starting about 5 parts per million (ppm). It won't injure or incapacitate you until at least 300 ppm (the published IDLH)." Defendants also misleadingly suggest that ammonia is "safe" at any level under 300 ppm, a representation that is belied by the PEL and STEL established by the Cal/OSHA regulations. Cal. Code. Regs. tit. 8, § 5155.

44. During Plaintiff's employment, Plaintiff discovered that the systems for maintaining the anhydrous ammonia at Camino Real's factory in Vernon, California, had not been properly maintained and were in a state of disrepair.

45. On information and belief, a third-party vendor in the business of repairing ammonia

1 refrigeration systems has made numerous recommendations for repairs to Defendants' ammonia
2 refrigeration system over an extended period. Defendants and their CEO Robert Cross, however,
3 have failed and refused to authorize and pay for the third-party contractor to make the recommended
4 repairs to the ammonia refrigeration system. As a result, the third-party vendor now refuses to
5 conduct further inspections and/or evaluations of Defendants' ammonia refrigeration system.

6 46. On information and belief, the ammonia emission alarms at Camino Real's factory in
7 Vernon, California, do not operate correctly or at all. The only means by which workers could detect
8 an ammonia leak is by smelling ammonia in the air.

9 47. On or about the week of February 6, 2023, the employees working at Camino Real's
10 factory in Vernon, California, were required to evacuate the factory because of an anhydrous ammonia
11 leak.

12 48. Following this evacuation, Plaintiff complained to Camino Real's CEO Robert Cross
13 about the faulty anhydrous ammonia refrigeration system. Plaintiff advised CEO Cross about the
14 necessity of the evacuation as well as of the need to repair and maintain the anhydrous ammonia
15 refrigeration system.

16 49. In response, however, CEO Cross refused to authorize the recommended and
17 necessary repairs to Defendants' anhydrous ammonia refrigeration system.

18 50. On or about the week of March 13, 2023, the employees working at Camino Real's
19 factory in Vernon, California, were again required to evacuate the factory because of an anhydrous
20 ammonia leak.

21 51. Following this evacuation, Plaintiff again complained about the faulty anhydrous
22 ammonia refrigeration system to Camino Real's CEO Robert Cross. Plaintiff advised CEO Cross
23 about the necessity of the evacuation as well as of the need to repair and update the anhydrous
24 ammonia refrigeration system.

25 52. In response, CEO Cross again refused to authorize the recommended and necessary
26 repairs to Defendants' anhydrous ammonia refrigeration system.

27 53. On or about April 4, 2023, the employees working at Camino Real's factory in
28 Vernon, California, were yet again required to evacuate the factory because of an anhydrous ammonia

1 leak. On this occasion, several pregnant workers were hospitalized due to exposure to ammonia, and
2 additional workers were sent home because they had fallen ill after exposure to ammonia.

3 54. Following the April 4, 2023 evacuation, Plaintiff sent Camino Real's CEO Robert
4 Cross a detailed email regarding the necessity of the evacuation and the need to repair and maintain
5 the anhydrous ammonia refrigeration system. Plaintiff expressly advised CEO Cross that the leaks
6 of anhydrous ammonia had caused three pregnant workers to be hospitalized and eight other workers
7 to be sent home because they were too ill to continue working. Plaintiff also expressly advised CEO
8 Cross that the City of Vernon Fire Department had responded to the April 4, 2023 evacuation to treat
9 the injured workers.

10 55. Although the April 4, 2023 evacuation was the third evacuation of the factory due to
11 leaks of anhydrous ammonia in 57 calendar days, CEO Cross again ignored Plaintiff's requests that
12 Camino Real repair and properly maintain Camino Real's faulty anhydrous ammonia refrigeration
13 system.

14 56. During Plaintiff's employment, Plaintiff also discovered that the roof of Camino
15 Real's Vernon factory leaked during rainstorms, allowing dirty, toxic, rust colored water to leak onto
16 the production floor and food manufacturing equipment.

17 57. On information and belief, the roof of the Camino Real factory may contain asbestos,
18 as the Camino Real factory was constructed in the 1950s when the use of asbestos in the construction
19 of commercial buildings was routine. On information and belief, Camino Real's CEO knows or
20 should know that the roofing materials in the Camino Real factory may contain asbestos.

21 58. Plaintiff reported and complained to CEO Robert Cross about the leaky roof and dirty,
22 rainwater that collected inside the factory on numerous occasions, generally after it had rained.
23 Plaintiff proposed that Defendants invest in the factory and repair the roof.

24 59. In response, CEO Cross refused to spend any money to repair the leaky roof.

25 60. During Plaintiff's employment, an employee working in the office complained that
26 she had been experiencing headaches that her medical provider attributed to the air quality in the
27 office. Plaintiff reported the employee's complaint to CEO Robert Cross and CCO Chari Cross, and
28 requested authorization to conduct wide-ranging tests of air quality for potential airborne

1 contaminants that a third-party testing vendor had recommended. Although Camino Real authorized
2 testing for dust mites, Camino Real refused to authorize the recommended wide-ranging tests for
3 airborne contaminants, stating that such a test may expose Camino Real to “liability.”

4 61. During Plaintiff’s employment, in February and March, 2023, Plaintiff also
5 complained to Camino Real’s CEO Cross and Camino Real’s human resource department that
6 Camino Real’s Director of Operations subjected Plaintiff to sexual harassment.

7 62. On April 12, 2023, CEO Cross met with Plaintiff’s direct reports but excluded
8 Plaintiff from the meetings.

9 63. On April 13, 2023—in retaliation for Plaintiff’s complaints about the numerous health
10 and safety violations at Camino Real’s facility in Vernon, California, and for complaints about sexual
11 harassment, and for disclosing workplace conditions, among other reasons—Defendants terminated
12 Plaintiff’s employment.

13 **FIRST CAUSE OF ACTION**

14 **For Civil Penalties, Pursuant to Labor Code § 2698, *et seq.***

15 **(By Plaintiff on Behalf of the State of California and Aggrieved Employees**

16 **Against all Defendants)**

17 64. Plaintiff incorporates all preceding allegations as if fully set forth herein.

18 65. Labor Code Section 2698, *et seq.* permits Plaintiff to recover civil penalties for the
19 violation(s) of the Labor Code Sections enumerated in Labor Code Section 2699.5. Section 2699.5
20 enumerates Labor Code Sections 98.6, 232.5, 1102.5 and 6310. Labor Code Section 2699.3(c)
21 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those
22 Labor Code Sections not found in Section 2699.5, including Labor Code Sections 6400, 6401,
23 6401.7, 6402, 6403, 6404, 6406, and 6407.

24 66. Plaintiff alleges in this case that he personally suffered violations of Labor Code
25 Sections 98.6, 232.5, 1102.5 and 6310 during the PAGA Period and thus has standing under the
26 PAGA as an “aggrieved employee.” Labor Code § 2699.3(c)(“aggrieved employee’ means any
27 person who was employed by the alleged violator and against whom one or more of the alleged
28 violations was committed”)(emphasis added).

67. Plaintiff’s “individual PAGA claims” with respect to Labor Code Sections 98.6, 232.5, 1102.5 and 6310 are currently being litigated in the Los Angeles County Superior Court in the case entitled *Eric Enciso v Camino Real Foods, Inc., et al.*, Case No. 23STCV14910 (L.A. Super. Ct.). In *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906, 1924-1925, the United States Supreme Court used the term “individual PAGA claim” to refer to individual Labor Code claims personally suffered by a plaintiff. 142 S.Ct. 1906, 1916. Under California law, however, [t]here is no individual component to a PAGA action because “every PAGA action . . . is a representative action on behalf of the state.” *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 87. An “individual PAGA claim” is thus merely an individual Labor Code claim.

68. In this case, Plaintiff does not allege that he personally suffered violations of Labor Code Sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407. To the contrary, Plaintiff alleges in this case that Defendants violated Labor Code Sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407 exclusively as non-individual, representative PAGA claims. Non-individual PAGA claims are “representative claims pursued by the plaintiff and based on Labor Code violations suffered by employees other than the plaintiff.” *Galarsa v. Dolgen California, LLC* (2023) 88 Cal.App.5th 639, 647, as modified on denial of reh’g (Feb. 24, 2023)(citing *Viking River*, 142 S.Ct. 1906, 1924-1925); *see also Huff v Securitas Sec. Servs. USA, Inc.* (2018) 23 Cal.App.5th 745, 751 (“[W]e conclude that PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”).

69. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff may recover civil penalties on behalf of himself, the State of California and other aggrieved current and former employees in the following amounts:

- a. For violations of Labor Code Sections 232.5, 6310, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by Labor Code Sections 2699(f)(2));

b. For violations of Labor Code Section 98.6, a civil penalty of ten thousand dollars (\$10,000) for each aggrieved employee for each violation (penalty amounts established by Labor Code Section 98.6(b)(3));

c. For violations of Labor Code Section 1102.5 a civil penalty of ten thousand dollars (\$10,000) for each aggrieved employee for each violation (penalty amounts established by Labor Code Section 1102.5(f);

70. As detailed below, Defendants violated Labor Code Sections 98.6, 232.5, 1102.5, 6310, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407.

71. These violations were willful, knowing, and intentional.

FAILURE TO PROVIDE A SAFE AND HEALTHFUL WORK ENVIRONMENT

(Labor Code §§ 6400, 6401, 6402, 6403, 6404, 6406, and 6407)

72. Plaintiff alleges that Defendants violated Labor Code Sections 6400, 6401, 6402, 6403, 6404, 6406, and 6407 exclusively as a non-individual, representative PAGA claim. As such, there is no “individual PAGA claim” with respect to Labor Code Sections 6400, 6401, 6402, 6403, 6404, 6406, and 6407.

73. Cal/OSHA Labor Code Sections 6400, 6401, 6402, 6403, 6404, 6406, and 6407 require employers to furnish employment and a place of employment that is safe and healthful for the employees as follows:

74. Labor Code Section 6400 provides that “Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.”

75. Labor Code Section 6401 provides that “Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.”

76. Labor Code Section 6402 provides that “No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.”

77. Labor Code Section 6403 provides that “No employer shall fail or neglect to do any

1 of the following: (a) To provide and use safety devices and safeguards reasonably adequate to render
2 the employment and place of employment safe. (b) To adopt and use methods and processes
3 reasonably adequate to render the employment and place of employment safe. (c) To do every other
4 thing reasonably necessary to protect the life, safety, and health of employees.”

5 78. Labor Code Section 6404 provides that “No employer shall occupy or maintain any
6 place of employment that is not safe and healthful.”

7 79. Labor Code Section 6406 provides that “No person shall do any of the following: (a)
8 Remove, displace, damage, destroy or carry off any safety device, safeguard, notice, or warning,
9 furnished for use in any employment or place of employment. (b) Interfere in any way with the use
10 thereof by any other person. (c) Interfere with the use of any method or process adopted for the
11 protection of any employee, including himself, in such employment, or place of employment. (d)
12 Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of
13 employees.

14 80. Labor Code Section 6407 provides that “Every employer and every employee shall
15 comply with occupational safety and health standards, with Section 25910 of the Health and Safety
16 Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his
17 own actions and conduct.”

18 81. During the relevant time period, as detailed above, Defendants violated Cal/OSHA
19 Labor Code Sections 6400, 6401, 6402, 6403, 6404, 6406, and 6407 by, *inter alia*, (a) failing to
20 maintain and repair its faulty ammonia refrigeration system despite three evacuations of the
21 Aggrieved Employees during a two-month period; (b) failing to schedule regular inspections of its
22 ammonia refrigeration system by qualified personnel; (c) failing to repair its leaky roof that, during
23 the rainy season, allows dirty, toxic, rust-colored water to leak onto the production floor and food
24 manufacturing equipment; and (d) failing to respond adequately to the complaints of workers
25 regarding the air quality in the Camino Real factory in Vernon, California.

26 82. Defendants’ failure to furnish employment and a place of employment that is safe and
27 healthful for all Aggrieved Employees violates Labor Code Sections 6400, 6401, 6402, 6403, 6404,
28 6406, and 6407. As a result, Plaintiff may therefore seek on behalf of the LWDA and the Aggrieved

Employees all applicable civil penalties, attorneys' fees, and costs pursuant to Labor Code Sections 2699(a), (f), and (g).

FAILURE TO IMPLEMENT AND MAINTAIN AN EFFECTIVE WRITTEN INJURY

PREVENTION PROGRAM

(Labor Code § 6401.7)

83. Plaintiff alleges that Defendants violated Labor Code Section 6401.7 exclusively as a non-individual, representative PAGA claim. As such, there is no "individual PAGA claim" with respect to Labor Code Section 6401.7.

84. Labor Code Section 6401.7(a) provides that "Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements:

(1) Identification of the person or persons responsible for implementing the program.

(2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.

(3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

(4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

(5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

85. During the relevant period, Defendants failed to provide employees with an effective injury prevention program that accurately conveyed "The employer's system for identifying and

1 evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions
2 and work practices” and that accurately conveyed “The employer’s methods and procedures for
3 correcting unsafe or unhealthy conditions and work practices in a timely manner.”

4 86. During the relevant period, on information and belief, Defendants also failed to
5 schedule periodic inspections to identify unsafe conditions and work practices, including but not
6 limited to scheduled periodic inspections by qualified personnel of Defendants’ ammonia
7 refrigeration systems.

8 87. In addition, on information and belief, Defendants have failed to implement and
9 execute methods and procedures for correcting unsafe or unhealthy conditions and work practices
10 with respect to Defendants’ ammonia refrigeration systems in a timely manner. As a result, as
11 detailed above, leaks of ammonia at the Camino Real factory forced the employees at Camino Real
12 to evacuate the factory on three occasions over a 57-day period between February 6 and April 4,
13 2023. On information and belief, additional leaks of ammonia have resulted in evacuations of
14 employees from the Camino Real factory during the Cal/OSHA PAGA Period.

15 88. Defendants have thus violated Labor Code Section 6401.7(a). As a result, Plaintiff
16 may therefore seek on behalf of the LWDA and the Aggrieved Employees all applicable civil
17 penalties, attorneys’ fees, and costs pursuant to Labor Code Sections 2699(a), (f)-(g).

18 **RETALIATION IN VIOLATION OF LABOR CODE § 1102.5**

19 89. Plaintiff’s “individual PAGA claim” with respect to Labor Code Section 1102.5 is
20 currently being litigated in the Los Angeles County Superior Court in the case entitled *Eric Enciso v*
21 *Camino Real Foods, Inc., et al.*, Case No. 23STCV14910 (L.A. Super. Ct.), where Plaintiff asserts
22 an individual claim for retaliation in violation of Labor Code Section 1102.5. Plaintiff nevertheless
23 seeks the civil penalty for Defendants’ violations of Labor Code Section 1102.5 in this case as such
24 civil penalty is only available in a PAGA action.

25 90. Labor Code Section 1102.5(b) provides that “An employer, or any person acting on
26 behalf of the employer, shall not retaliate against an employee for disclosing information, or because
27 the employer believes that the employee disclosed or may disclose information, to a government or
28 law enforcement agency, to a person with authority over the employee or another employee who has

1 the authority to investigate, discover, or correct the violation or noncompliance . . . , if the employee
2 has reasonable cause to believe that the information discloses a violation of state or federal statute,
3 or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
4 whether disclosing the information is part of the employees job duties.”

5 91. As detailed above, during his employment, Plaintiff engaged in activity protected by
6 Labor Code Section 1102.5 by complaining and reporting to Camino Real’s CEO Robert Cross that:
7 (a) Defendants was subjecting its 500 to 600 workers to unsafe and unhealthy working conditions by
8 failing to repair its ammonia refrigeration system, which resulted in early 2023 in three evacuations
9 of employees from the Camino Real factory during a two-month period, and multiple employees
10 including pregnant women becoming sick and requiring hospitalization; (b) Defendants was
11 subjecting its 500 to 600 workers to unsafe and unhealthy working conditions by failing to repair a
12 leaky roof that allows dirty, toxic rain water to collect on the production floor and food manufacturing
13 equipment; (c) Camino Real’s Director of Operations subjected Plaintiff to sexual harassment; and
14 (d) Defendants was failing to ensure that the water used in the food manufacturing process was
15 sufficiently hot because Defendants allowed all four of its industrial hot water heaters to fall into
16 disrepair.

17 92. Plaintiff’s complaints and reports to Defendants disclosed violations of the following
18 California and federal statutes, among others:

- 19 a. Government Code Section 12940(a) (providing that it is an unlawful employment
20 practice “[f]or any employer . . . because of the . . . sexual orientation . . . of any
21 person. . . to discharge the person from employment . . . or to discriminate against the
22 person in compensation or in terms, conditions, or privileges of employment.”);
- 23 b. Government Code Section 12940(j) (providing that it is an unlawful employment
24 practice “[f]or an employer . . . or any other person, because of . . . sex [and/or] sexual
25 orientation. . . to harass an employee. . . .”);
- 26 c. Cal. Code. Regs. tit. 8, § 5155 (establishing the Permissible Exposure Limit (“PML”)
27 for ammonia in the workplace in a workday, expressed as an 8-hour time weighted
28 average concentration, at 25 ppm; and establishing the Short Term Exposure Limit

1 (“STML”) for ammonia, expressed as a 15-minute time-weighted average exposure,
2 at 35 ppm);

3 d. Cal. Code Regs., tit. 8, § 3248 (requiring employers to design, install, test, and
4 maintain mechanical refrigeration systems in compliance with the 1982 Uniform
5 Mechanical Code, 1997 Uniform Mechanical Code, 2007 California Mechanical
6 Code, based on the date the employer placed the mechanical refrigeration system into
7 service);

8 e. Labor Code Section 6400 (“Every employer shall furnish employment and a place of
9 employment that is safe and healthful for the employees therein.”);

10 f. Labor Code Section 6401 (“Every employer shall furnish and use safety devices and
11 safeguards, and shall adopt and use practices, means, methods, operations, and
12 processes which are reasonably adequate to render such employment and place of
13 employment safe and healthful. Every employer shall do every other thing reasonably
14 necessary to protect the life, safety, and health of employees.”);

15 g. Labor Code Section 6401.7(a) (“Every employer shall establish, implement, and
16 maintain an effective injury prevention program. The program shall be written, except
17 as provided in subdivision (e), and shall include, but not be limited to, the following
18 elements: (1) Identification of the person or persons responsible for implementing the
19 program. (2) The employer’s system for identifying and evaluating workplace
20 hazards, including scheduled periodic inspections to identify unsafe conditions and
21 work practices. (3) The employer’s methods and procedures for correcting unsafe or
22 unhealthy conditions and work practices in a timely manner. (4) An occupational
23 health and safety training program designed to instruct employees in general safe and
24 healthy work practices and to provide specific instruction with respect to hazards
25 specific to each employee’s job assignment. (5) The employer’s system for
26 communicating with employees on occupational health and safety matters, including
27 provisions designed to encourage employees to inform the employer of hazards at the
28 worksite without fear of reprisal.”);

- 1 h. Labor Code Section 6401.7(b) (“The employer shall correct unsafe and unhealthy
2 conditions and work practices in a timely manner based on the severity of the
3 hazard.”);
- 4 i. Labor Code Section 6402 (“No employer shall require, or permit any employee to go
5 or be in any employment or place of employment which is not safe and healthful.”);
- 6 j. Labor Code Section 6403 (“No employer shall fail or neglect to do any of the
7 following: (a) To provide and use safety devices and safeguards reasonably adequate
8 to render the employment and place of employment safe. (b) To adopt and use
9 methods and processes reasonably adequate to render the employment and place of
10 employment safe. (c) To do every other thing reasonably necessary to protect the life,
11 safety, and health of employees.”);
- 12 k. Labor Code Section 6404 (“No employer shall occupy or maintain any place of
13 employment that is not safe and healthful.”);
- 14 l. Labor Code Section 6406 (“No person shall do any of the following: (a) Remove,
15 displace, damage, destroy or carry off any safety device, safeguard, notice, or
16 warning, furnished for use in any employment or place of employment. (b) Interfere
17 in any way with the use thereof by any other person. (c) Interfere with the use of any
18 method or process adopted for the protection of any employee, including himself, in
19 such employment, or place of employment. (d) Fail or neglect to do every other thing
20 reasonably necessary to protect the life, safety, and health of employees.”);
- 21 m. Labor Code Section 6407 (“Every employer and every employee shall comply with
22 occupational safety and health standards, with Section 25910 of the Health and Safety
23 Code, and with all rules, regulations, and orders pursuant to this division which are
24 applicable to his own actions and conduct.”); and
- 25 n. Cal. Bus. & Prof. Code Section 17200, *et seq.* (prohibiting any “unlawful,” “unfair,”
26 or “fraudulent” business acts or practices).
- 27 93. Plaintiff’s conduct constituted a disclosure of and/or opposition to conduct that
28 Plaintiff had reasonable cause to believe constituted a violation of state, local and/or federal laws,

1 rules, or regulations.

2 94. Plaintiff made such disclosures to person(s) with authority over Plaintiff or other
3 employee(s) who had the authority to investigate, discover, or correct the violation or non-
4 compliance. Defendants also perceived, feared and/or believed that Plaintiff may make protected
5 disclosures in the future. Plaintiff's conduct was thus protected under Labor Code Section 1102.5(b).

6 95. In March and April 2023, Defendants retaliated against Plaintiff in violation of Labor
7 Code Section 1102.5(b) by conducting an inadequate sham investigation of Plaintiff's sexual
8 harassment complaint, excluding Plaintiff from executive-level meetings with his direct reports, and
9 by terminating Plaintiff's employment.

10 96. Plaintiff's protected activities, refusals and/or opposition was/were a contributing
11 factor to Defendants' decision to take adverse actions against Plaintiff. Labor Code § 1102.6; *Lawson*
12 *v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 707.

13 97. Defendants' conduct harmed Plaintiff and was a substantial factor in causing
14 Plaintiff's harm.

15 98. On information and belief, Defendants have retaliated against other Aggrieved
16 Employees for engaging in activities protected by Labor Code Section 1102.5 by terminating their
17 employment or taking other adverse actions against them.

18 99. Labor Code Section 1102.5(f) provides that "In addition to other penalties, an
19 employer that is a corporation or limited liability company is liable for a civil penalty not exceeding
20 ten thousand dollars (\$10,000) for each violation of this section."

21 100. Defendants have thus violated Labor Code Section 1102.5 as to the Plaintiff and, on
22 information and belief, as to other Aggrieved Employees. As a result, Plaintiff may therefore seek
23 on behalf of the LWDA and the Aggrieved Employees all applicable civil penalties, attorneys' fees
24 and costs pursuant to Labor Code Sections 1102.5(f) and/or 2699(a), (f)-(g).

25 **RETALIATION IN VIOLATION OF LABOR CODE § 6310**

26 101. Plaintiff's "individual PAGA claim" with respect to Labor Code Section 6310 is *Eric*
27 *Enciso v Camino Real Foods, Inc., et al.*, Case No. 23STCV14910 (L.A. Super. Ct.), where Plaintiff
28 asserts an individual claim for retaliation in violation of Labor Code Section 6310.

1 102. Labor Code Section 6310(a) provides that “No person shall discharge or in any
2 manner discriminate against any employee because the employee has . . . [m]ade any oral or written
3 complaint . . . with reference to employee safety or health, [to] their employer, or their
4 representative.”

5 103. As detailed above, during his employment, Plaintiff engaged in activity protected by
6 Labor Code Section 6310 by complaining and reporting to Camino Real’s CEO Robert Cross that:
7 (a) Defendants was subjecting its 500 to 600 workers to unsafe and unhealthy working conditions by
8 failing to repair its ammonia refrigeration system, which resulted in early 2023 in three evacuations
9 of employees from the Camino Real factory during a two-month period, and multiple employees
10 including pregnant women becoming sick and requiring hospitalization; (b) Defendants was
11 subjecting its 500 to 600 workers to unsafe and unhealthy working conditions by failing to repair a
12 leaky roof that allows dirty, toxic rain water to collect on the production floor and food manufacturing
13 equipment; (c) Plaintiff did not feel safe in the workplace because Defendants failed to take any
14 corrective or remedial action in response to Plaintiff’s complaints of sexual harassment; and (d)
15 Defendants was potentially subjecting employees to poor air quality that was causing employees to
16 become ill, which required a wide-ranging tests for airborne contaminants and Defendants failed and
17 refused to authorize such wide-ranging tests for airborne contaminants.

18 104. At the time that Plaintiff engaged in the protected activities, Plaintiff reasonably
19 believed the working conditions and/or practices to be unsafe and unhealthy for employees.

20 105. In March and April 2023, Defendants retaliated against Plaintiff in violation of Labor
21 Code Section 6310(a) by conducting an inadequate sham investigation of Plaintiff’s sexual
22 harassment complaint, excluding Plaintiff from executive-level meetings with his direct reports that
23 a COO should attend, and by terminating Plaintiff’s employment.

24 106. Defendants have violated Labor Code Section 6310(a) as to the Plaintiff and, on
25 information and belief, as to other Aggrieved Employees. As a result, Plaintiff may therefore seek
26 on behalf of the LWDA and the Aggrieved Employees all applicable civil penalties, attorneys’ fees,
27 and costs pursuant to Labor Code Sections 2699(a), (f), and (g).

28 //

RETALIATION IN VIOLATION OF LABOR CODE § 232.5

107. Plaintiff's "individual PAGA claim" with respect to Labor Code Section 232.5 is currently being litigated in the Los Angeles County Superior Court in the case entitled *Eric Enciso v Camino Real Foods, Inc., et al.*, Case No. 23STCV14910 (L.A. Super. Ct.), where Plaintiff asserts an individual claim for retaliation in violation of Labor Code Section 232.5.

108. Plaintiff was an employee of Defendants, which are employers and/or entities governed by the California Labor Code including Labor Code Section 232.5.

109. Labor Code Section 232.5 makes it unlawful for employers: (a) to require, as a condition of employment, that an employee refrain from disclosing information about the employer's working conditions; (b) to require an employee to sign a waiver or other document that purports to deny the employee the right to disclose information about the employer's working conditions; and (c) to discharge, formally discipline, or otherwise discriminate against an employee who discloses information about the employer's working conditions.

110. As detailed above, during his employment, Plaintiff engaged in activity protected by Labor Code Section 232.5 by disclosing information about working conditions at Camino Real's factory in Vernon, California, to CEO Robert Cross and other employees as follows: (a) Defendants was subjecting its 500 to 600 workers to unsafe and unhealthy working conditions by failing to repair its ammonia refrigeration system, which resulted in early 2023 in three evacuations of employees from the Camino Real factory during a two-month period, and multiple employees including pregnant women becoming sick and requiring hospitalization; (b) Defendants was subjecting its 500 to 600 workers to unsafe and unhealthy working conditions by failing to repair a leaky roof that allows dirty, toxic rain water to collect on the production floor and food manufacturing equipment; and (c) Defendants was potentially subjecting employees to poor air quality that was causing employees to become ill, which required wide-ranging tests for airborne contaminants and Defendants failed and refused to authorize the recommended wide-ranging tests for airborne contaminants.

111. At the time that Plaintiff engaged in the protected disclosures, Plaintiff reasonably believed the working conditions at Camino Real's factory to be unsafe and unhealthy for employees.

112. In March and April 2023, Defendants retaliated and discriminated against Plaintiff in violation of Labor Code Section 232.5 by conducting an inadequate sham investigation of Plaintiff's sexual harassment complaint, excluding Plaintiff from executive-level meetings with his direct reports that a COO should attend, and by terminating Plaintiff's employment.

113. On information and belief, Defendants have retaliated against other Aggrieved Employees for engaging in activities protected by Labor Code Section 232.5 by terminating their employment or taking other adverse actions against them.

114. Defendants have violated Labor Code Section 232.5 as to the Plaintiff and, on information and belief, as to other Aggrieved Employees. As a result, Plaintiff may therefore seek on behalf of the LWDA and the Aggrieved Employees all applicable civil penalties, attorneys' fees, and costs pursuant to Labor Code Sections 2699(a), (f), and (g).

RETALIATION IN VIOLATION OF LABOR CODE § 98.6

115. Plaintiff's "individual PAGA claim" with respect to Labor Code Section 98.6 is currently being litigated in the Los Angeles County Superior Court in the case entitled *Eric Enciso v Camino Real Foods, Inc., et al.*, Case No. 23STCV14910 (L.A. Super. Ct.), where Plaintiff asserts an individual claim for retaliation in violation of Labor Code Section 98.6. Plaintiff nevertheless seeks the civil penalty for Defendants' violations of Labor Code Section 98.6 in this case as such civil penalty is only available in a PAGA action.

116. Labor Code Section 98.6 prohibits an employer from discriminating against, retaliating against, or taking any adverse action against an employee because of the exercise by the employee for employment on behalf of himself, herself, or others of any rights afforded him or her under the Labor Code.

117. As detailed above, during his employment, Plaintiff exercised the rights afforded to Plaintiff under Labor Code Sections 1102.5, 6310, 6400, 6401, 6401.7, 6402, 6403, 6404, and 6406, by making complaints regarding employee health and safety at the Camino Real factory in Vernon, California, and Defendant's unlawful business acts and practices.

118. In March and April 2023, Defendants retaliated and discriminated against Plaintiff in violation of Labor Code Section 98.6 by conducting an inadequate sham investigation of Plaintiff's

1 sexual harassment complaint, excluding Plaintiff from executive-level meetings with his direct
2 reports that a COO should attend, and by terminating Plaintiff's employment.

3 119. On information and belief, Defendants have retaliated against other Aggrieved
4 Employees for engaging in activities protected by Labor Code Section 98.6 by terminating their
5 employment or taking other adverse actions against them.

6 120. Labor Code Section 98.6(b)(3) provides that "[i]n addition to other remedies
7 available, an employer who violates this section is liable for a civil penalty not exceeding ten
8 thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the
9 employee or employees who suffered the violation."

10 121. Defendants have violated Labor Code Section 98.6 as to the Plaintiff and, on
11 information and belief, as to other Aggrieved Employees. As a result, Plaintiff may therefore seek
12 on behalf of the LWDA and the Aggrieved Employees all applicable civil penalties, attorneys' fees,
13 and costs pursuant to Labor Code Sections 98.6 and 2699(a), (f), and (g).

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this
16 suit is brought against Defendants, jointly and severally, as follows:

17 1. For civil penalties pursuant to Labor Code Sections 98.6, 1102.5, 2699(a), (f) and (g),
18 for the State of California and all Aggrieved Employees for Defendants' violations of Labor Code
19 Sections 98.6, 232.5, 1102.5, 6310, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407;

20 2. For attorneys' fees and costs pursuant to Labor Code Section 1102.5(j) and
21 2699(g)(1), and all other relevant statutes, for Defendants' violations of Labor Code Sections 98.6,
22 232.5, 1102.5, 6310, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407;

23 //

24 //

25 //

26 //

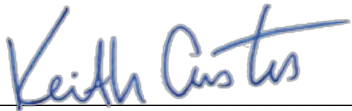
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28 //

3. For pre-judgment and post-judgment interest as provided by law; and
4. For such other and further relief as the Court may deem equitable and appropriate.

Dated: October 13, 2023

CUSTIS LAW, P.C.

By: 
Keith Custis

Attorneys for Plaintiff
ERIC ENCISO

Exhibit 1



June 28, 2023

Keith A. Custis
kcustis@custislawpc.com

SUBMITTED VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612

VIA EMAIL: DOSHREG4Monrovia@dir.ca.gov

Division of Occupational Health and Safety
Hassan Adan, Regional Manager
800 Royal Oaks Drive, Suite 105
Monrovia, CA 91016

VIA EMAIL: DOSHLA@dir.ca.gov

Division of Occupational Health and Safety
Victor Copelan, District Manager
320 West 4th Street, Suite 820
Los Angeles, CA 90013

SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Robert Cross
Chief Executive Officer
Camino Real Foods, Inc.
2368 East Vernon Ave.
Vernon, CA 90058

Jesse Casso, Jr.
Executive Chairman of the Board
Camino Real Foods, Inc.
2368 East Vernon Ave.
Vernon, CA 90058

Re: *Eric Enciso v. Camino Real Foods, Inc.*, Written Notice of Intent to File Civil Action
Pursuant to California Labor Code §§ 2699.3(a); 2699.3(b)(2)(B)(ii); and 2699.3(c)

Dear PAGA Administrator and Employer,

This office represents Eric Enciso ("Mr. Enciso") with respect to claims arising under California's Labor Code during his employment at and termination from Camino Real Foods, Inc. ("Camino Real"). Camino Real is a food manufacturer that employs, supervises and/or manages approximately 500 to 600 workers at its food production plant located at 2638 East Vernon

Avenue, Vernon, California 90058. Camino Real is in the business of selling frozen Mexican-style foods, including burritos and chimichangas, under the Tina's Burrito's brand (<https://www.tinasburritos.com>). According to Camino Real's President and CEO Robert Cross, Camino Real's workers roll over 1,000,000 burritos a day. Camino Real's products are sold at grocery stores and other retailers throughout the United States.

Camino Real employed Mr. Enciso as Camino Real's Chief Operating Officer from approximately January 9, 2023 until his wrongful termination on April 13, 2023. Mr. Enciso is referred to in this correspondence as the "Lead Aggrieved Employee."

NOTICE OF SERIOUS CAL/OSHA VIOLATIONS

As detailed below, the Lead Aggrieved Employee through his Employee Representative charges that Camino Real alleges that Camino Real's failure to comply with its health and safety obligations under applicable laws was willful and constituted a "serious violation" within the meaning of Labor Code §6309(a) because the conditions that Camino Real created and allowed to continue as set forth in that complaint establish a "realistic possibility that death or serious physical harm could result from the actual hazard created by a condition that exists, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use in a place of employment."

As detailed below, the conditions that Camino Real have created and allowed to continue involve exposure of employees to unhealthy and dangerous levels of anhydrous ammonia that resulted in three evacuations of the Camino Real factory, located at 2638 East Vernon Avenue, Los Angeles, CA 90058, during a 57-day period between February 6, 2023 and April 4, 2023. On April 4, 2023, during the last of these evacuations, three pregnant workers were hospitalized due to exposure to ammonia, and eight workers were sent home because they had fallen ill after exposure to ammonia. During his employment, the Lead Aggrieved Employee discovered that Camino Real had not properly maintained its ammonia refrigeration system, and repeatedly requested authorization to spend the money necessary to make all recommended repairs to update and maintain the ammonia refrigeration system. In response, Camino Real's CEO Robert Cross refused to authorize the recommended repairs and maintenance.

In addition, the conditions that Camino Real have created and allowed to continue involve the potential exposure of employees to asbestos and other toxins. The roof of Camino Real's Vernon factory leaks during rainstorms, allowing dirty, toxic, rust colored water to leak onto the production floor and food manufacturing equipment. On information and belief, the roof of the Camino Real factory may contain asbestos, as the Camino Real factory was constructed in the 1950s when the use of asbestos in the construction of commercial buildings was routine. During his employment, the Lead Aggrieved Employee proposed that Camino Real repair the roof. In response, Camino Real's CEO Robert Cross refused to authorize the requested repairs to the roof.

Pursuant to Labor Code Section 2810.3, Camino Real serves as the “client employer” of all the workers that work at its food manufacturing facility in Vernon, California, regardless of whether Camino Real directly employs the workers or whether those workers are directly employed by staffing agencies and/or labor contractors. Because Camino Real is the “client employer” within the meaning of Labor Code Section 2810.3, Camino Real cannot shift to any staffing agency or other labor contractor its legal duties and/or liabilities under Labor Code Section 6300, *et seq.* See Labor Code § 2810.3(c) (“A client employer shall not shift to the labor contractor any legal duties or liabilities under Division 5 (commencing with Section 6300) with respect to workers supplied by the labor contractor.”); *In re Walmart Assocs., Inc.* (Cal-OSH App.Bd.) 2022 WL 3011450.

The Lead Aggrieved Employee intends to file a civil action against Camino Real (“Camino Real” or “Employer”), seeking, *inter alia*, civil penalties, attorneys’ fees, costs and other available relief that is recoverable under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code Section 2698, *et al.*, for violations of the California Labor Code. The Lead Aggrieved Employee shall seek relief on behalf of the State of California, and all aggrieved employees, who are defined as:

All current and former non-exempt and exempt employees of Camino Real Foods, Inc. and all other non-exempt and exempt employees employed by staffing agencies and/or labor contractors and assigned to work at Camino Real Foods, Inc.’s facility located at 2638 East Vernon Avenue Vernon, CA 90058, who worked at least one pay period at Camino Real Foods, Inc.’s facility located at 2638 East Vernon Avenue Vernon, CA 90058, during the period of time that is one year prior to the date this notice was filed and continuing through the present (hereafter, “Aggrieved Employees”).

Pursuant to California Labor Code Section 2699.3, this letter serves as the Lead Aggrieved Employee’s written notice, and complaints, to the Division of Occupational Health and Safety, the Labor and Workforce Development Agency (“LWDA”) and Camino Real regarding the following alleged violations of the California Labor Code, and the facts and legal theories that support those violations.¹ This letter is being submitted to the Division of Occupational Health and Safety and the LWDA online pursuant to the process described on the California Department of Industrial Relations’ website.² The \$75.00 filing fee required by Labor Code Section 2699.3 was paid during the online submission of this letter.

¹ The Labor Code violations, facts and legal theories detailed herein are based on the Lead Aggrieved Employee’s experience and his counsel’s review of the records currently available relating to the Lead Aggrieved Employee’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional Labor Code violations as well as additional facts and legal theories supporting the alleged Labor Code violations. Thus, the Lead Aggrieved Employee reserves the right to supplement this letter with additional Labor Code violations, facts, and legal theories if he becomes aware of them subsequent to the submission of this letter.

² See <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

In addition, with respect to the alleged violations of Labor Code Sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407, this letter serves as the Lead Aggrieved Employee's written notice and complaint submitted pursuant to Labor Code § 2699.3(b)(2)(B)(ii), which authorizes aggrieved employees to pursue PAGA civil penalties under the provisions set forth in Labor Code § 2699.3(c) where the Division of Occupational Safety and Health ("Division") has failed to inspect or investigate a worker's complaint alleging violations of Labor Code §§ 6300, *et seq.* If the Division fails to inspect or investigate the alleged violations of Labor Code Sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407, the Lead Aggrieved Employee shall amend this notice and proceed pursuant to Labor Code Section 2699.3(c) with respect to the alleged violations of Labor Code Sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407.

As detailed below, Camino Real has violated the California Labor Code within the last year and beyond as to the Lead Aggrieved Employee and other Aggrieved Employees in the following respects:

A. **Failure to Provide a Safe and Healthful Work Environment in Violation of Labor Code Sections 6400, 6401, 6402, 6403, 6404, 6406, and 6407**

During the last twelve months and beyond, Camino Real's actions and failures to act have violated the following Cal/OSHA Labor Code Sections:

Labor Code Section 6400 provides that "Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein."

Labor Code Section 6401 provides that "Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees."

Labor Code Section 6402 provides that "No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful."

Labor Code Section 6403 provides that "No employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.

- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.”

Labor Code Section 6404 provides that “No employer shall occupy or maintain any place of employment that is not safe and healthful.”

Labor Code Section 6406 provides that “No person shall do any of the following:

- (a) Remove, displace, damage, destroy or carry off any safety device, safeguard, notice, or warning, furnished for use in any employment or place of employment.
- (b) Interfere in any way with the use thereof by any other person.
- (c) Interfere with the use of any method or process adopted for the protection of any employee, including himself, in such employment, or place of employment.
- (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code Section 6407 provides that “Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.”

* * *

During the last twelve months and beyond, Camino Real failed to furnish the Lead Aggrieved Employee and Aggrieved Employees a place of employment that is safe and healthful for the Lead Aggrieved Employee and other Aggrieved Employees, and otherwise violated the aforementioned Labor Code Sections, as follows:

Camino Real operates in a single story, approximately 80,000 square foot factory located in Vernon CA. The main building is approximately 60,000 square feet and consist of the main production floor, kitchen, test kitchen, bakery, small warehouse/staging area, freezers, and office area.

During the Lead Aggrieved Employee’s employment, the Lead Aggrieved Employee discovered, reported and complained about:

- a. Camino Real’s failure to repair its faulty ammonia refrigeration system that endangers the health and safety of workers who are repeatedly exposed to unhealthy

and dangerous levels of anhydrous ammonia;

- b. Camino Real's failure to repair a leaky roof, which, during the rainy season, allows dirty, toxic, rust-colored water to leak onto the production floor and food manufacturing equipment; and
- c. Camino Real's failure to respond adequately to the complaints of workers regarding the air quality in the Camino Real factory in Vernon, California, where workers had complained that airborne contaminants had caused them to be sick.

As detailed below, the Lead Aggrieved Employee complained to CEO Robert Cross who resides and works in Bentonville, Arkansas. Although CEO Cross makes appearances at the Camino Real factory in Vernon, California, from time to time, CEO Cross is largely an absentee CEO who operates Camino Real from his office more than 1,500 miles from Camino Real's unsafe and unhealthy factory.

Camino Real use anhydrous ammonia as the refrigerant in the refrigeration system at the Camino Real factory in Vernon, California. Anhydrous ammonia, when used under pressure as a liquefied refrigerant, can be a significant health hazard if there is a release of the ammonia into the air. Ammonia is corrosive to the skin, eyes and lungs, even at low concentrations in the air. Symptoms of exposure to anhydrous ammonia include skin and eye burns, severe throat pain, and coughing/wheezing. Accidental and/or negligent ammonia releases can cause injuries and death to employees, emergency response personnel, and people in surrounding communities. Exposure to anhydrous ammonia between 5 and 50 ppm can cause headaches, loss of the sense of smell, nausea, and vomiting. Concentrations above 50 ppm result in irritation to the nose, mouth, and throat causing coughing and wheezing. Concentrations of 300 to 500 ppm are immediately dangerous to life.

Cal/OSHA regulations establish the maximum permissible time-weighted average exposure limit ("PEL") of anhydrous ammonia for an 8-hour workday at 25 ppm. Cal. Code. Regs. tit. 8, § 5155. Cal/OSHA regulations establish the maximum short term exposure limit ("STEL") for ammonia, expressed as a 15-minute time-weighted average exposure, at 35 ppm. *Id.* Camino Real does not advise its employees of Cal/OSHA's PEL and STEL exposure limits for ammonia. Instead, Camino Real advises its employees that "people can smell ammonia starting about 5 parts per million (ppm). It won't injure or incapacitate you until at least 300 ppm (the published IDLH)."

During the Lead Aggrieved Employee's employment, the Lead Aggrieved Employee discovered that the systems for maintaining the anhydrous ammonia at Camino Real's factory in Vernon, California, had not been properly maintained and were in a state of disrepair.

On information and belief, a third-party vendor in the business of repairing ammonia refrigeration systems has made numerous recommendations for repairs to Camino Real's ammonia refrigeration system over an extended period. Camino Real and its CEO Robert Cross, however,

have failed and refused to authorize and pay for the third-party contractor to make the recommended repairs to the ammonia refrigeration system. As a result, the third-party vendor now refuses to conduct further inspections and/or evaluations of Camino Real's ammonia refrigeration system.

On information and belief, the ammonia emission alarms at Camino Real's factory in Vernon, California, do not operate correctly or at all. The only means by which workers could detect an ammonia leak is by smelling ammonia in the air.

On or about the week of February 6, 2023, the employees working at Camino Real's factory in Vernon, California, were required to evacuate the factory because of an anhydrous ammonia leak. Following this evacuation, the Lead Aggrieved Employee complained to CEO Robert Cross about the faulty anhydrous ammonia refrigeration system. The Lead Aggrieved Employee advised CEO Cross about the necessity of the evacuation as well as of the need to repair and maintain the anhydrous ammonia refrigeration system. In response, however, CEO Cross refused to authorize the recommended and necessary repairs to Defendants' anhydrous ammonia refrigeration system.

On or about the week of March 13, 2023, the employees working at Camino Real's factory in Vernon, California, were again required to evacuate the factory because of an anhydrous ammonia leak. Following this evacuation, the Lead Aggrieved Employee again complained about the faulty anhydrous ammonia refrigeration system to CEO Cross. The Lead Aggrieved Employee advised CEO Cross about the necessity of the evacuation as well as of the need to repair and update the anhydrous ammonia refrigeration system. In response, CEO Cross again refused to authorize the recommended and necessary repairs to Defendants' anhydrous ammonia refrigeration system.

On or about April 4, 2023, the employees working at Camino Real's factory in Vernon, California, were yet again required to evacuate the factory because of an anhydrous ammonia leak. On this occasion, three pregnant workers were hospitalized due to exposure to ammonia, and eight workers were sent home because they had fallen ill after exposure to ammonia. Following the April 4, 2023 evacuation, the Lead Aggrieved Employee sent CEO Robert Cross a detailed email regarding the necessity of the evacuation and the need to repair and maintain the anhydrous ammonia refrigeration system. The Lead Aggrieved Employee expressly advised CEO Cross that the leaks of anhydrous ammonia had caused three pregnant workers to be hospitalized and eight other workers to be sent home because they were too ill to continue working. The Lead Aggrieved Employee also expressly advised CEO Cross that the City of Vernon Fire Department had responded to the April 4, 2023 evacuation to treat the injured workers.

Although the April 4, 2023 evacuation was the third evacuation of the factory due to leaks of anhydrous ammonia in 57 calendar days, CEO Cross again ignored the Lead Aggrieved Employee's requests that Camino Real repair and properly maintain the faulty anhydrous ammonia refrigeration system.

In addition, during the Lead Aggrieved Employee's employment, the Lead Aggrieved

Employee also discovered that the roof of Camino Real's Vernon factory leaked during rainstorms, allowing dirty, toxic, rust colored water to leak onto the production floor and food manufacturing equipment. On information and belief, the roof of the Camino Real factory may contain asbestos, as the Camino Real factory was constructed in the 1950s when the use of asbestos in the construction of commercial buildings was routine. On information and belief, Camino Real's CEO knows or should know that the roofing materials in the Camino Real factory may contain asbestos. The Lead Aggrieved Employee reported and complained about the leaky roof and dirty, rainwater that collected inside the factory to CEO Cross on numerous occasions, generally after it had rained. The Lead Aggrieved Employee proposed that Camino Real invest in the factory and repair the roof. In response, CEO Cross refused to authorize the repair of the leaky roof.

Further, during the Lead Aggrieved Employee's employment, an employee working in the office complained that she had been experiencing headaches that her medical provider attributed to the air quality in the office. The Lead Aggrieved Employee reported the employee's complaint to CEO Robert Cross and CCO Chari Cross, and requested authorization to conduct a wide-ranging tests of air quality for all potential airborne contaminants. Although Camino Real authorized testing for dust mites, Camino Real refused to authorize the recommended wide-ranging tests for all airborne contaminants, stating that such a test may expose Camino Real to "liability."

For the foregoing reasons, Camino Real has violated Labor Code Sections 6400, 6401, 6402, 6403, 6404, 6406, 6407. As a result, if Cal/OSHA does not conduct an investigation or inspection, the Lead Aggrieved Employee, acting in the public interest as a private attorney general, shall amend this notice and proceed pursuant to Labor Code Section 2699.3(c) with respect to the alleged violations of Labor Code Sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407.

B. Failure to Implement and Maintain an Effective Written Injury Prevention Program in Violation of Labor Code Section 6401.7

Labor Code Section 6401.7(a) provides that "Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements:

- (1) Identification of the person or persons responsible for implementing the program.
- (2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.
- (3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

- (4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.
- (5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal."

During the last twelve months and beyond, Defendant failed to provide employees with an effective injury prevention program that accurately conveyed "The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices" and that accurately conveyed "The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner."

During the last twelve months and beyond, on information and belief, Camino Real has failed to schedule periodic inspections to identify unsafe conditions and work practices with respect to Camino Real's ammonia refrigeration systems. Likewise, on information and belief, Camino Real has failed to implement and execute methods and procedures for correcting unsafe or unhealthy conditions and work practices with respect to Camino Real's ammonia refrigeration systems in a timely manner. As a result, as detailed above, leaks of ammonia at the Camino Real factory forced the employees at Camino Real to evacuate the factory on three occasions over a 57-day period between February 6 and April 4, 2023. Plaintiff lacks knowledge regarding evacuations that occurred prior to January 9, 2023 and after April 13, 2023 because Plaintiff was only employed at Camino Real from January 9, 2023 to his wrongful termination on April 13, 2023. On information and belief, additional leaks of ammonia have resulted in evacuations of employees from the Camino Real factory both before and subsequent to Plaintiff's period of employment.

Camino Real has thus violated Labor Code Section 6401.7(a). As a result, if Cal/OSHA does not conduct an investigation or inspection, the Lead Aggrieved Employee, acting in the public interest as a private attorney general, shall amend this notice and proceed pursuant to Labor Code Section 2699.3(c) with respect to the alleged violations of Labor Code Sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407.

C. Retaliation for Making Complaints About Employee Safety and Health in Violation of Labor Code Section 6310

Labor Code § 6310 provides in relevant part that:

- (a) No person shall discharge or in any manner discriminate against any employee because the employee has done any of

the following:

- (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, their employer, or their representative.
- (2) Instituted or caused to be instituted any proceeding under or relating to their rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of themselves, or others of any rights afforded to them.

During the last twelve months and beyond, Camino Real has retaliated against the Lead Aggrieved Employee and, on information and belief, other Aggrieved Employees in violation of Labor Code Section 6310 for making oral or written complaints to Camino Real regarding employee safety or health.

As detailed above, within the previous twelve months, including on February 6, March 13, and April 4, 2023, the Lead Aggrieved Employee engaged in activity protected under Labor Code Section 6310 by making multiple oral and written complaints about employee safety and health to Camino Real's CEO Robert Cross. At the time that the Lead Aggrieved Employee engaged in the protected activities, the Lead Aggrieved Employee reasonably believed the working conditions to be unsafe and unhealthy.

On April 13, 2023, in retaliation for the Lead Aggrieved Employee's complaints of employee health and safety and in violation of Labor Code Section 6310, Camino Real terminated the Lead Aggrieved Employee's employment. On information and belief, Camino Real has retaliated against other Aggrieved Employees for complaining and/or reporting about the occupational safety hazards and/or injuries by terminating their employment or taking other adverse actions against them.

Camino Real has thus violated Labor Code Section 6310. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to seek on behalf of the LWDA and the Aggrieved Employees all applicable civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 2699(a), (f)-(g).

D. Retaliation for Disclosing Information About Camino Real's Working Conditions in Violation of Labor Code Section 232.5

Labor Code Section 232.5 provides in relevant part that "No employer may do any of the following:

- (a) Require, as a condition of employment, that an employee refrain from disclosing

information about the employer's working conditions.

- (b) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose information about the employer's working conditions.
- (c) Discharge, formally discipline, or otherwise discriminate against an employee who discloses information about the employer's working conditions.

Within the previous twelve months, including on February 6, March 13, and April 4, 2023, the Lead Aggrieved Employee engaged in activity protected under Labor Code Section 232.5 by making numerous disclosures regarding workplace conditions to Camino Real's CEO Robert Cross and to other employees.

As detailed above, during his employment, the Lead Aggrieved Employee engaged in activity protected by Labor Code Section 232.5 by making disclosures about Camino Real's working conditions to Camino Real's CEO Robert Cross and other employees that: (a) Camino Real was subjecting its 500 to 600 workers to unsafe and unhealthy working conditions by failing to repair its ammonia refrigeration system, which resulted in early 2023 in three evacuations of employees from the Camino Real factory during a two-month period, and multiple employees including pregnant women becoming sick and requiring hospitalization; (b) Camino Real was subjecting its 500 to 600 workers to unsafe and unhealthy working conditions by failing to repair a leaky roof that allows dirty, toxic rain water to collect on the production floor and food manufacturing equipment; and (c) Camino Real was failing to ensure that the water used in the food manufacturing process was sufficiently hot because Camino Real allowed all four of its industrial hot water heaters to fall into disrepair.

On April 13, 2023, in retaliation for the Lead Aggrieved Employee's disclosures of Camino Real's working conditions and in violation of Labor Code Section 232.5, Camino Real terminated the Lead Aggrieved Employee's employment. On information and belief, Camino Real has retaliated against other Aggrieved Employees for making protected disclosures about Camino Real's working conditions by terminating their employment or taking other adverse actions against them.

Camino Real has thus violated Labor Code Section 232.5. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to seek on behalf of the LWDA and the Aggrieved Employees all applicable civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 2699(a), (f)-(g).

E. Violations of Labor Code Section 1102.5

Labor Code Section 1102.5(b) provides that "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the

employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . , if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employees job duties.”

Within the previous twelve months, including on February 6, March 13, and April 4, 2023, the Lead Aggrieved Employee engaged in activities protected under Labor Code Section 1102.5(b) by making multiple oral and written complaints about employee safety and health to Camino Real’s CEO Robert Cross.

As detailed above, during his employment, the Lead Aggrieved Employee engaged in activity protected by Labor Code Section 1102.5 by complaining and reporting to Camino Real’s CEO Robert Cross that: (a) Camino Real was subjecting its 500 to 600 workers to unsafe and unhealthy working conditions by failing to repair its ammonia refrigeration system, which resulted in early 2023 in three evacuations of employees from the Camino Real factory during a two-month period, and multiple employees including pregnant women becoming sick and requiring hospitalization; (b) Camino Real was subjecting its 500 to 600 workers to unsafe and unhealthy working conditions by failing to repair a leaky roof that allows dirty, toxic rain water to collect on the production floor and food manufacturing equipment; and (c) Camino Real was failing to ensure that the water used in the food manufacturing process was sufficiently hot because Camino Real allowed all four of its industrial hot water heaters to fall into disrepair. The Lead Aggrieved Employee also complained to the CEO and COO that an employee had sexually harassed the Lead Aggrieved Employee.

The Lead Aggrieved Employee’s complaints and reports to Camino Real disclosed violations of the following California and federal statutes and regulations, among others:

- a. Cal. Code. Regs. tit. 8, § 5155 (establishing the Permissible Exposure Limit (“PML”) for ammonia in the workplace in a workday, expressed as an 8-hour time weighted average concentration, at 25 ppm; and establishing the permissible Short Term Exposure Limit (“STML”) for ammonia, expressed as a 15-minute time-weighted average exposure, at 35 ppm);
- b. Cal. Code Regs., tit. 8, § 3248 (requiring employers to design, install, test, and maintain mechanical refrigeration systems in compliance with the 1982 Uniform Mechanical Code, 1997 Uniform Mechanical Code, 2007 California Mechanical Code, based on the date the employer placed the mechanical refrigeration system into service);
- c. Labor Code Section 6400 (“Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.”);

d. Labor Code Section 6401 (“Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.”);

e. Labor Code Section 6401.7(a) (“Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements: (1) Identification of the person or persons responsible for implementing the program. (2) The employer’s system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices. (3) The employer’s methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner. (4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee’s job assignment. (5) The employer’s system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.”);

f. Labor Code Section 6401.7(b) (“The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.”);

g. Labor Code Section 6402 (“No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.”);

h. Labor Code Section 6403 (“No employer shall fail or neglect to do any of the following: (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe. (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe. (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.”);

i. Labor Code Section 6404 (“No employer shall occupy or maintain any place of employment that is not safe and healthful.”);

j. Labor Code Section 6406 (“No person shall do any of the following: (a) Remove, displace, damage, destroy or carry off any safety device, safeguard, notice, or warning, furnished for use in any employment or place of employment. (b) Interfere in any way with the use thereof by any other person. (c) Interfere with the use of any method or process adopted for the protection of any employee, including himself, in such employment, or place of employment. (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.”);

k. Labor Code Section 6406 (“No person shall do any of the following: (a) Remove, displace, damage, destroy or carry off any safety device, safeguard, notice, or warning, furnished for use in any employment or place of employment. (b) Interfere in any way with the use thereof by any other person. (c) Interfere with the use of any method or process adopted for the protection of any employee, including himself, in such employment, or place of employment. (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.”);

l. Labor Code Section 6407 (“Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.”);

m. Government Code Section 12940(a) (providing that it is an unlawful employment practice “[f]or any employer . . . because of the . . . sexual orientation . . . of any person. . . to discharge the person from employment . . . or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.”);

n. Government Code Section 12940(j) (providing that it is an unlawful employment practice “[f]or an employer . . . or any other person, because of . . . sex [and/or] sexual orientation. . . to harass an employee. . . .”); and

o. Cal. Bus. & Prof. Code Section 17200, *et seq.* (prohibiting any “unlawful,” “unfair,” or “fraudulent” business acts or practices).

The Lead Aggrieved Employee’s conduct constituted a disclosure of and/or opposition to conduct that the Lead Aggrieved Employee had reasonable cause to believe constituted a violation of state, local and/or federal laws, rules, or regulations.

The Lead Aggrieved Employee made such disclosures to person(s) with authority over The Lead Aggrieved Employee or other employee(s) who had the authority to investigate, discover, or correct the violation or non-compliance. Camino Real also perceived, feared and/or believed that the Lead Aggrieved Employee may make protected disclosures in the future. The Lead Aggrieved Employee’s conduct was thus protected under Labor Code Section 1102.5(b).

In March and April 2023, Camino Real retaliated against the Lead Aggrieved Employee in violation of Labor Code Section 1102.5(b) by terminating the Lead Aggrieved Employee’s employment. On information and belief, Camino Real has retaliated against other Aggrieved Employees for activities protected by Labor Code Section 1102.5 by terminating their employment or taking other adverse actions against them.

Labor Code Section 1102.5(f) provides that “In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.”

In light of Camino Real's violations of Labor Code Section 1102.5, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties and reasonable attorneys' fees and costs pursuant to Labor Code Sections 1102.5(f) and/or 2699(a), (f)-(g).

F. Violations of Labor Code Section 98.6

Labor Code Section 98.6 prohibits an employer from discriminating against, retaliating against, or taking any adverse action against an employee because the employee has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, or because the employee has initiated any action or notice pursuant to Section 2699, or because of the exercise by the employee for employment on behalf of himself, herself, or others of any rights afforded him or her under the Labor Code. Labor Code Section 98.6(b)(3) provides that, "[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation."

Within the previous twelve months, including on February 6, March 13, and April 4, 2023, the Lead Aggrieved Employee exercised rights afforded to him under the Labor Code including Labor Code Sections 1102.5 and 6310.

In March and April 2023, Camino Real retaliated against the Lead Aggrieved Employee in violation of Labor Code Section 98.6 by terminating the Lead Aggrieved Employee's employment. On information and belief, Camino Real has retaliated against other Aggrieved Employees for engaging in activities protected by Labor Code Section 1102.5 by terminating their employment or taking other adverse actions against them.

The Lead Aggrieved Employee and other Aggrieved Employees are thus entitled to recover civil penalties and reasonable attorneys' fees and costs pursuant to Labor Code Sections 98.6 and/or 2699(a), (f)-(g).

* * *

If Cal/OSHA does not conduct an investigation or inspection regarding the alleged violations of California Labor Code Sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407 within the periods set forth in Labor Code Section 6309, the Lead Aggrieved Employee, acting in the public interest as a private attorney general, shall amend this notice and proceed pursuant to Labor Code Section 2699.3(c) with respect to the alleged violations of Labor Code Sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407.

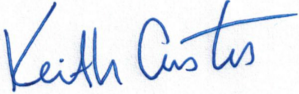
If the LWDA does not provide notice that it will investigate the alleged violations of Labor Code Sections 98.6, 232.5, 1102.5, and 6310 within 65 days of the date of this notice, the Lead

Aggrieved Employee, acting in the public interest as a private attorney general, shall file a civil action—and seek assessment and collection of civil penalties and all other available relief for himself, all other Aggrieved Employees, and the State of California—against Camino Real and its owners and officers for violations of California Labor Code Sections 98.6, 232.5, 1102.5, and 6310, as detailed herein. The Lead Aggrieved Employee shall seek all applicable and available penalties and remedies related to these violations of the California Labor Code pursuant to PAGA, including an award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).

If the LWDA and/or OSHA has any questions for the Lead Aggrieved Employee or any aspect of this Notice, please feel free to contact Keith Custis as kcustis@custislawpc.com or 213-863-4276.

Sincerely,

CUSTIS LAW, P.C.



Keith A. Custis

Exhibit 2



July 24, 2023

Keith A. Custis
kcustis@custislawpc.com

SUBMITTED VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612

VIA EMAIL: DOSHREG4Monrovia@dir.ca.gov

Division of Occupational Health and Safety
Hassan Adan, Regional Manager
800 Royal Oaks Drive, Suite 105
Monrovia, CA 91016

VIA EMAIL: DOSHLA@dir.ca.gov

Division of Occupational Health and Safety
David Rodriguez, District Manager
320 West 4th Street, Suite 820
Los Angeles, CA 90013

SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Robert Cross
Chief Executive Officer
Camino Real Foods, Inc.
2368 East Vernon Ave.
Vernon, CA 90058

Certified Mail No. 9402811206203254741823

Re: *Eric Enciso v. Camino Real Foods, Inc.*, LWDA Case No. LWDA-CM-964990-23:
Amended Written Notice of Intent to File Civil Action Pursuant to California Labor Code
§§ 2699.3(a); 2699.3(b)(2)(B)(ii); and 2699.3(c)

Dear PAGA Administrator and Employer,

This office represents Eric Enciso (“Mr. Enciso”) with respect to claims arising under California’s Labor Code during his employment at and termination from Camino Real Foods, Inc.

(“Camino Real”). Camino Real is a food manufacturer that employs, supervises and/or manages approximately 500 to 600 workers at its food production plant located at 2638 East Vernon Avenue, Vernon, California 90058. Camino Real is in the business of selling frozen Mexican-style foods, including burritos and chimichangas, under the Tina’s Burrito’s brand (<https://www.tinasburritos.com>). According to Camino Real’s President and CEO Robert Cross, Camino Real’s workers roll over 1,000,000 burritos a day. Camino Real’s products are sold at grocery stores and other retailers throughout the United States.

Camino Real employed Mr. Enciso as Camino Real’s Chief Operating Officer from approximately January 9, 2023 until his wrongful termination on April 13, 2023. Mr. Enciso is referred to in this correspondence as the “Lead Aggrieved Employee.”

On June 28, 2023, the Lead Aggrieved Employee, on behalf of the State of California, himself and other Aggrieved Employees, filed a PAGA Notice with the LWDA and Cal/OSHA pursuant to Labor Code §2699.3(b)(2)(B)(ii) alleging violations of Labor Code 6400, 6401, 6401.7(a), 6402, 6403, 6404, 6406, 6407.

The Lead Aggrieved Employee’s original PAGA Notice is attached hereto as Exhibit 1 and incorporated herein by reference, alleged that Camino Real’s failure to comply with its health and safety obligations under applicable laws was willful and constituted a “serious violation” within the meaning of Labor Code §6309(a) because the conditions that Camino Real created and allowed to continue as set forth in that complaint established a “realistic possibility that death or serious physical harm could result from the actual hazard created by a condition that exists, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use in a place of employment.”

The Division did not respond to the Lead Aggrieved Employee’s original PAGA Notice within the statutory three-day response period mandated by Labor Code § 6309 for “serious violations,” did not respond to Lead Aggrieved Employee’s original PAGA Notice’s within the fourteen-day response period mandated by Labor Code § 6309 for “non-serious violations.” Pursuant to Labor Code §2699.3(b)(2)(B)(ii), this notice is therefore timely pursuant to Labor Code §2699.3(c). As of today’s date, Camino Real still has not cured the violations giving rise to this notice and further enumerated below. *See* Labor Code §2699.3(c)(2)(A).

The Lead Aggrieved Employee therefore seeks to recover on behalf of the State of California and all Aggrieved Employees all civil penalties and other relief made recoverable by PAGA.

As detailed below, Camino Real has violated the California Labor Code within the last year and beyond as to the Lead Aggrieved Employee and other Aggrieved Employees in the following respects:

A. Failure to Provide a Safe and Healthful Work Environment in Violation of Labor Code Sections 6400, 6401, 6402, 6403, 6404, 6406, and 6407

During the last twelve months and beyond, Camino Real's actions and failures to act have violated the following Cal/OSHA Labor Code Sections:

Labor Code Section 6400 provides that "Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein."

Labor Code Section 6401 provides that "Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees."

Labor Code Section 6402 provides that "No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful."

Labor Code Section 6403 provides that "No employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees."

Labor Code Section 6404 provides that "No employer shall occupy or maintain any place of employment that is not safe and healthful."

Labor Code Section 6406 provides that "No person shall do any of the following:

- (a) Remove, displace, damage, destroy or carry off any safety device, safeguard, notice, or warning, furnished for use in any employment or place of employment.
- (b) Interfere in any way with the use thereof by any other person.

- (c) Interfere with the use of any method or process adopted for the protection of any employee, including himself, in such employment, or place of employment.
- (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code Section 6407 provides that “Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.”

* * *

During the last twelve months and beyond, Camino Real failed to furnish the Lead Aggrieved Employee and Aggrieved Employees a place of employment that is safe and healthful for the Lead Aggrieved Employee and other Aggrieved Employees, and otherwise violated the aforementioned Labor Code Sections, as follows:

Camino Real operates in a single story, approximately 80,000 square foot factory located in Vernon CA. The main building is approximately 60,000 square feet and consist of the main production floor, kitchen, test kitchen, bakery, small warehouse/staging area, freezers, and office area.

During the Lead Aggrieved Employee’s employment, the Lead Aggrieved Employee discovered, reported and complained about:

- a. Camino Real’s failure to repair its faulty ammonia refrigeration system that endangers the health and safety of workers who are repeatedly exposed to unhealthy and dangerous levels of anhydrous ammonia;
- b. Camino Real’s failure to repair a leaky roof, which, during the rainy season, allows dirty, toxic, rust-colored water to leak onto the production floor and food manufacturing equipment; and
- c. Camino Real’s failure to respond adequately to the complaints of workers regarding the air quality in the Camino Real factory in Vernon, California, where workers had complained that airborne contaminants had caused them to be sick.

As detailed below, the Lead Aggrieved Employee complained to CEO Robert Cross who resides and works in Bentonville, Arkansas. Although CEO Cross makes appearances at the Camino Real factory in Vernon, California, from time to time, CEO Cross is largely an absentee CEO who operates Camino Real from his office more than 1,500 miles from Camino Real’s unsafe

and unhealthy factory.

Camino Real use anhydrous ammonia as the refrigerant in the refrigeration system at the Camino Real factory in Vernon, California. Anhydrous ammonia, when used under pressure as a liquefied refrigerant, can be a significant health hazard if there is a release of the ammonia into the air. Ammonia is corrosive to the skin, eyes and lungs, even at low concentrations in the air. Symptoms of exposure to anhydrous ammonia include skin and eye burns, severe throat pain, and coughing/wheezing. Accidental and/or negligent ammonia releases can cause injuries and death to employees, emergency response personnel, and people in surrounding communities. Exposure to anhydrous ammonia between 5 and 50 ppm can cause headaches, loss of the sense of smell, nausea, and vomiting. Concentrations above 50 ppm result in irritation to the nose, mouth, and throat causing coughing and wheezing. Concentrations of 300 to 500 ppm are immediately dangerous to life.

Cal/OSHA regulations establish the maximum permissible time-weighted average exposure limit (“PEL”) of anhydrous ammonia for an 8-hour workday at 25 ppm. Cal. Code. Regs. tit. 8, § 5155. Cal/OSHA regulations establish the maximum short term exposure limit (“STEL”) for ammonia, expressed as a 15-minute time-weighted average exposure, at 35 ppm. *Id.* Camino Real does not advise its employees of Cal/OSHA’s PEL and STEL exposure limits for ammonia. Instead, Camino Real advises its employees that “people can smell ammonia starting about 5 parts per million (ppm). It won’t injure or incapacitate you until at least 300 ppm (the published IDLH).”

During the Lead Aggrieved Employee’s employment, the Lead Aggrieved Employee discovered that the systems for maintaining the anhydrous ammonia at Camino Real’s factory in Vernon, California, had not been properly maintained and were in a state of disrepair.

On information and belief, a third-party vendor in the business of repairing ammonia refrigeration systems has made numerous recommendations for repairs to Camino Real’s ammonia refrigeration system over an extended period. Camino Real and its CEO Robert Cross, however, have failed and refused to authorize and pay for the third-party contractor to make the recommended repairs to the ammonia refrigeration system. As a result, the third-party vendor now refuses to conduct further inspections and/or evaluations of Camino Real’s ammonia refrigeration system.

On information and belief, the ammonia emission alarms at Camino Real’s factory in Vernon, California, do not operate correctly or at all. The only means by which workers could detect an ammonia leak is by smelling ammonia in the air.

On or about the week of February 6, 2023, the employees working at Camino Real’s factory in Vernon, California, were required to evacuate the factory because of an anhydrous ammonia leak. Following this evacuation, the Lead Aggrieved Employee complained to CEO Robert Cross about the faulty anhydrous ammonia refrigeration system. The Lead Aggrieved Employee advised CEO Cross about the necessity of the evacuation as well as of the need to repair and maintain the

anhydrous ammonia refrigeration system. In response, however, CEO Cross refused to authorize the recommended and necessary repairs to Defendants' anhydrous ammonia refrigeration system.

On or about the week of March 13, 2023, the employees working at Camino Real's factory in Vernon, California, were again required to evacuate the factory because of an anhydrous ammonia leak. Following this evacuation, the Lead Aggrieved Employee again complained about the faulty anhydrous ammonia refrigeration system to CEO Cross. The Lead Aggrieved Employee advised CEO Cross about the necessity of the evacuation as well as of the need to repair and update the anhydrous ammonia refrigeration system. In response, CEO Cross again refused to authorize the recommended and necessary repairs to Defendants' anhydrous ammonia refrigeration system.

On or about April 4, 2023, the employees working at Camino Real's factory in Vernon, California, were yet again required to evacuate the factory because of an anhydrous ammonia leak. On this occasion, three pregnant workers were hospitalized due to exposure to ammonia, and eight workers were sent home because they had fallen ill after exposure to ammonia. Following the April 4, 2023 evacuation, the Lead Aggrieved Employee sent CEO Robert Cross a detailed email regarding the necessity of the evacuation and the need to repair and maintain the anhydrous ammonia refrigeration system. The Lead Aggrieved Employee expressly advised CEO Cross that the leaks of anhydrous ammonia had caused three pregnant workers to be hospitalized and eight other workers to be sent home because they were too ill to continue working. The Lead Aggrieved Employee also expressly advised CEO Cross that the City of Vernon Fire Department had responded to the April 4, 2023 evacuation to treat the injured workers.

Although the April 4, 2023 evacuation was the third evacuation of the factory due to leaks of anhydrous ammonia in 57 calendar days, CEO Cross again ignored the Lead Aggrieved Employee's requests that Camino Real repair and properly maintain the faulty anhydrous ammonia refrigeration system.

In addition, during the Lead Aggrieved Employee's employment, the Lead Aggrieved Employee also discovered that the roof of Camino Real's Vernon factory leaked during rainstorms, allowing dirty, toxic, rust colored water to leak onto the production floor and food manufacturing equipment. On information and belief, the roof of the Camino Real factory may contain asbestos, as the Camino Real factory was constructed in the 1950s when the use of asbestos in the construction of commercial buildings was routine. On information and belief, Camino Real's CEO knows or should know that the roofing materials in the Camino Real factory may contain asbestos. The Lead Aggrieved Employee reported and complained about the leaky roof and dirty, rainwater that collected inside the factory to CEO Cross on numerous occasions, generally after it had rained. The Lead Aggrieved Employee proposed that Camino Real invest in the factory and repair the roof. In response, CEO Cross refused to authorize the repair of the leaky roof.

Further, during the Lead Aggrieved Employee's employment, an employee working in the office complained that she had been experiencing headaches that her medical provider attributed to the air quality in the office. The Lead Aggrieved Employee reported the employee's complaint

to CEO Robert Cross and CCO Chari Cross, and requested authorization to conduct a wide-ranging tests of air quality for all potential airborne contaminants. Although Camino Real authorized testing for dust mites, Camino Real refused to authorize the recommended wide-ranging tests for all airborne contaminants, stating that such a test may expose Camino Real to “liability.”

For the foregoing reasons, Camino Real has violated Labor Code Sections 6400, 6401, 6402, 6403, 6404, 6406, 6407. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to seek on behalf of the LWDA and the Aggrieved Employees all applicable civil penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code Sections 2699(a), (f)-(g).

B. Failure to Implement and Maintain an Effective Written Injury Prevention Program in Violation of Labor Code Section 6401.7

Labor Code Section 6401.7(a) provides that “Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements:

- (1) Identification of the person or persons responsible for implementing the program.
- (2) The employer’s system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.
- (3) The employer’s methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.
- (4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee’s job assignment.
- (5) The employer’s system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.”

During the last twelve months and beyond, Defendant failed to provide employees with an effective injury prevention program that accurately conveyed “The employer’s system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices” and that accurately conveyed “The employer’s methods and

procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.”

During the last twelve months and beyond, on information and belief, Camino Real has failed to schedule periodic inspections to identify unsafe conditions and work practices with respect to Camino Real’s ammonia refrigeration systems. Likewise, on information and belief, Camino Real has failed to implement and execute methods and procedures for correcting unsafe or unhealthy conditions and work practices with respect to Camino Real’s ammonia refrigeration systems in a timely manner. As a result, as detailed above, leaks of ammonia at the Camino Real factory forced the employees at Camino Real to evacuate the factory on three occasions over a 57-day period between February 6 and April 4, 2023. Plaintiff lacks knowledge regarding evacuations that occurred prior to January 9, 2023 and after April 13, 2023 because Plaintiff was only employed at Camino Real from January 9, 2023 to his wrongful termination on April 13, 2023. On information and belief, additional leaks of ammonia have resulted in evacuations of employees from the Camino Real factory both before and subsequent to Plaintiff’s period of employment.

Camino Real has thus violated Labor Code Section 6401.7(a). As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to seek on behalf of the LWDA and the Aggrieved Employees all applicable civil penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code Sections 2699(a), (f)-(g).

C. **Retaliation for Making Complaints About Employee Safety and Health in Violation of Labor Code Section 6310**

Labor Code § 6310 provides in relevant part that:

- (a) No person shall discharge or in any manner discriminate against any employee because the employee has done any of the following:
 - (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, their employer, or their representative.
 - (2) Instituted or caused to be instituted any proceeding under or relating to their rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of themselves, or others of any rights afforded to them.

During the last twelve months and beyond, Camino Real has retaliated against the Lead Aggrieved Employee and, on information and belief, other Aggrieved Employees in violation of Labor Code Section 6310 for making oral or written complaints to Camino Real regarding

employee safety or health.

As detailed above, within the previous twelve months, including on February 6, March 13, and April 4, 2023, the Lead Aggrieved Employee engaged in activity protected under Labor Code Section 6310 by making multiple oral and written complaints about employee safety and health to Camino Real's CEO Robert Cross. At the time that the Lead Aggrieved Employee engaged in the protected activities, the Lead Aggrieved Employee reasonably believed the working conditions to be unsafe and unhealthy.

On April 13, 2023, in retaliation for the Lead Aggrieved Employee's complaints of employee health and safety and in violation of Labor Code Section 6310, Camino Real terminated the Lead Aggrieved Employee's employment. On information and belief, Camino Real has retaliated against other Aggrieved Employees for complaining and/or reporting about the occupational safety hazards and/or injuries by terminating their employment or taking other adverse actions against them.

Camino Real has thus violated Labor Code Section 6310. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to seek on behalf of the LWDA and the Aggrieved Employees all applicable civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 2699(a), (f)-(g).

D. Retaliation for Disclosing Information About Camino Real's Working Conditions in Violation of Labor Code Section 232.5

Labor Code Section 232.5 provides in relevant part that "No employer may do any of the following:

- (a) Require, as a condition of employment, that an employee refrain from disclosing information about the employer's working conditions.
- (b) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose information about the employer's working conditions.
- (c) Discharge, formally discipline, or otherwise discriminate against an employee who discloses information about the employer's working conditions.

Within the previous twelve months, including on February 6, March 13, and April 4, 2023, the Lead Aggrieved Employee engaged in activity protected under Labor Code Section 232.5 by making numerous disclosures regarding workplace conditions to Camino Real's CEO Robert Cross and to other employees.

As detailed above, during his employment, the Lead Aggrieved Employee engaged in

activity protected by Labor Code Section 232.5 by making disclosures about Camino Real's working conditions to Camino Real's CEO Robert Cross and other employees that: (a) Camino Real was subjecting its 500 to 600 workers to unsafe and unhealthy working conditions by failing to repair its ammonia refrigeration system, which resulted in early 2023 in three evacuations of employees from the Camino Real factory during a two-month period, and multiple employees including pregnant women becoming sick and requiring hospitalization; (b) Camino Real was subjecting its 500 to 600 workers to unsafe and unhealthy working conditions by failing to repair a leaky roof that allows dirty, toxic rain water to collect on the production floor and food manufacturing equipment; and (c) Camino Real was failing to ensure that the water used in the food manufacturing process was sufficiently hot because Camino Real allowed all four of its industrial hot water heaters to fall into disrepair.

On April 13, 2023, in retaliation for the Lead Aggrieved Employee's disclosures of Camino Real's working conditions and in violation of Labor Code Section 232.5, Camino Real terminated the Lead Aggrieved Employee's employment. On information and belief, Camino Real has retaliated against other Aggrieved Employees for making protected disclosures about Camino Real's working conditions by terminating their employment or taking other adverse actions against them.

Camino Real has thus violated Labor Code Section 232.5. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to seek on behalf of the LWDA and the Aggrieved Employees all applicable civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 2699(a), (f)-(g).

E. Violations of Labor Code Section 1102.5

Labor Code Section 1102.5(b) provides that "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . , if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employees job duties."

Within the previous twelve months, including on February 6, March 13, and April 4, 2023, the Lead Aggrieved Employee engaged in activities protected under Labor Code Section 1102.5(b) by making multiple oral and written complaints about employee safety and health to Camino Real's CEO Robert Cross.

As detailed above, during his employment, the Lead Aggrieved Employee engaged in activity protected by Labor Code Section 1102.5 by complaining and reporting to Camino Real's CEO Robert Cross that: (a) Camino Real was subjecting its 500 to 600 workers to unsafe and

unhealthy working conditions by failing to repair its ammonia refrigeration system, which resulted in early 2023 in three evacuations of employees from the Camino Real factory during a two-month period, and multiple employees including pregnant women becoming sick and requiring hospitalization; (b) Camino Real was subjecting its 500 to 600 workers to unsafe and unhealthy working conditions by failing to repair a leaky roof that allows dirty, toxic rain water to collect on the production floor and food manufacturing equipment; and (c) Camino Real was failing to ensure that the water used in the food manufacturing process was sufficiently hot because Camino Real allowed all four of its industrial hot water heaters to fall into disrepair. The Lead Aggrieved Employee also complained to the CEO and COO that an employee had sexually harassed the Lead Aggrieved Employee.

The Lead Aggrieved Employee's complaints and reports to Camino Real disclosed violations of the following California and federal statutes and regulations, among others:

a. Cal. Code. Regs. tit. 8, § 5155 (establishing the Permissible Exposure Limit ("PML") for ammonia in the workplace in a workday, expressed as an 8-hour time weighted average concentration, at 25 ppm; and establishing the permissible Short Term Exposure Limit ("STML") for ammonia, expressed as a 15-minute time-weighted average exposure, at 35 ppm);

b. Cal. Code Regs., tit. 8, § 3248 (requiring employers to design, install, test, and maintain mechanical refrigeration systems in compliance with the 1982 Uniform Mechanical Code, 1997 Uniform Mechanical Code, 2007 California Mechanical Code, based on the date the employer placed the mechanical refrigeration system into service);

c. Labor Code Section 6400 ("Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.");

d. Labor Code Section 6401 ("Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.");

e. Labor Code Section 6401.7(a) ("Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements: (1) Identification of the person or persons responsible for implementing the program. (2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices. (3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner. (4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment. (5) The employer's system for communicating with employees on occupational

health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.”);

f. Labor Code Section 6401.7(b) (“The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.”);

g. Labor Code Section 6402 (“No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.”);

h. Labor Code Section 6403 (“No employer shall fail or neglect to do any of the following: (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe. (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe. (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.”);

i. Labor Code Section 6404 (“No employer shall occupy or maintain any place of employment that is not safe and healthful.”);

j. Labor Code Section 6406 (“No person shall do any of the following: (a) Remove, displace, damage, destroy or carry off any safety device, safeguard, notice, or warning, furnished for use in any employment or place of employment. (b) Interfere in any way with the use thereof by any other person. (c) Interfere with the use of any method or process adopted for the protection of any employee, including himself, in such employment, or place of employment. (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.”);

k. Labor Code Section 6406 (“No person shall do any of the following: (a) Remove, displace, damage, destroy or carry off any safety device, safeguard, notice, or warning, furnished for use in any employment or place of employment. (b) Interfere in any way with the use thereof by any other person. (c) Interfere with the use of any method or process adopted for the protection of any employee, including himself, in such employment, or place of employment. (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.”);

l. Labor Code Section 6407 (“Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.”);

m. Government Code Section 12940(a) (providing that it is an unlawful employment practice “[f]or any employer . . . because of the . . . sexual orientation . . . of any person. . . to discharge the person from employment . . . or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.”);

n. Government Code Section 12940(j) (providing that it is an unlawful employment practice “[f]or an employer . . . or any other person, because of . . . sex [and/or] sexual orientation. . . to harass an employee. . . .”); and

o. Cal. Bus. & Prof. Code Section 17200, *et seq.* (prohibiting any “unlawful,” “unfair,” or “fraudulent” business acts or practices).

The Lead Aggrieved Employee’s conduct constituted a disclosure of and/or opposition to conduct that the Lead Aggrieved Employee had reasonable cause to believe constituted a violation of state, local and/or federal laws, rules, or regulations.

The Lead Aggrieved Employee made such disclosures to person(s) with authority over The Lead Aggrieved Employee or other employee(s) who had the authority to investigate, discover, or correct the violation or non-compliance. Camino Real also perceived, feared and/or believed that the Lead Aggrieved Employee may make protected disclosures in the future. The Lead Aggrieved Employee’s conduct was thus protected under Labor Code Section 1102.5(b).

In March and April 2023, Camino Real retaliated against the Lead Aggrieved Employee in violation of Labor Code Section 1102.5(b) by terminating the Lead Aggrieved Employee’s employment. On information and belief, Camino Real has retaliated against other Aggrieved Employees for activities protected by Labor Code Section 1102.5 by terminating their employment or taking other adverse actions against them.

Labor Code Section 1102.5(f) provides that “In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.”

In light of Camino Real’s violations of Labor Code Section 1102.5, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties and reasonable attorneys’ fees and costs pursuant to Labor Code Sections 1102.5(f) and/or 2699(a), (f)-(g).

F. Violations of Labor Code Section 98.6

Labor Code Section 98.6 prohibits an employer from discriminating against, retaliating against, or taking any adverse action against an employee because the employee has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, or because the employee has initiated any action or notice pursuant to Section 2699, or because of the exercise by the employee for employment on behalf of himself, herself, or others of any rights afforded him or her under the Labor Code. Labor Code Section 98.6(b)(3) provides that, “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.”

Within the previous twelve months, including on February 6, March 13, and April 4, 2023, the Lead Aggrieved Employee exercised rights afforded to him under the Labor Code including Labor Code Sections 1102.5 and 6310.

In March and April 2023, Camino Real retaliated against the Lead Aggrieved Employee in violation of Labor Code Section 98.6 by terminating the Lead Aggrieved Employee's employment. On information and belief, Camino Real has retaliated against other Aggrieved Employees for engaging in activities protected by Labor Code Section 1102.5 by terminating their employment or taking other adverse actions against them.

The Lead Aggrieved Employee and other Aggrieved Employees are thus entitled to recover civil penalties and reasonable attorneys' fees and costs pursuant to Labor Code Sections 98.6 and/or 2699(a), (f)-(g).

* * *

If the LWDA does not provide notice that it will investigate the alleged violations of Labor Code Sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407 within 65 days of the date of this notice, the Lead Aggrieved Employee, acting in the public interest as a private attorney general, shall file a civil action—and seek assessment and collection of civil penalties and all other available relief for himself, all other Aggrieved Employees, and the State of California—against Camino Real and its owners and officers for violations of California Labor Code Sections 98.6, 232.5, 1102.5, and 6310, as detailed herein. The Lead Aggrieved Employee shall seek all applicable and available penalties and remedies related to these violations of the California Labor Code pursuant to PAGA, including an award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).

If the LWDA does not provide notice that it will investigate the alleged violations of Labor Code Sections 98.6, 232.5, 1102.5, and 6310 within 65 days of June 28, 2023, the Lead Aggrieved Employee, acting in the public interest as a private attorney general, shall file a civil action—and seek assessment and collection of civil penalties and all other available relief for himself, all other Aggrieved Employees, and the State of California—against Camino Real and its owners and officers for violations of California Labor Code Sections 98.6, 232.5, 1102.5, and 6310, as detailed herein. The Lead Aggrieved Employee shall seek all applicable and available penalties and remedies related to these violations of the California Labor Code pursuant to PAGA, including an award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).

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July 24, 2023
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If the LWDA and/or OSHA has any questions for the Lead Aggrieved Employee or any aspect of this Notice, please feel free to contact Keith Custis as kcustis@custislawpc.com or 213-863-4276.

Sincerely,

CUSTIS LAW, P.C.



Keith A. Custis

Encl.

[The Exhibit 1 to the July 24, 2023 PAGA
Notice is Intentionally Not Produced As It Is
Produced as Exhibit 1 to the Complaint]