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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

JUAN FERNANDO MERENDON-
CEREGA, an individual, on behalf of the
STATE OF CALIFORNIA

Plaintiff,

v.

SABOR FARMS, LLC, a California limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

CASE NUMBER: 23CV003181

COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA")

[California Labor Code § 2698 *et seq.*]

1 This is a representative action brought by Juan Fernando Merendon-Cerega, individually
2 and on behalf of all other aggrieved employees (“Plaintiff”), relating to systemic violations of
3 California wage and hour laws by his former employer Sabor Farms, LLC (“Defendant”).
4 Plaintiff makes the following allegations on information and belief, except as to allegations
5 pertaining to Plaintiff individually, which are based on his personal knowledge.

6 **INTRODUCTION**

7 1. Defendant has implemented common policies and practices that have resulted in
8 systematic violations of California’s Labor Code and the applicable Industrial Welfare Commission
9 (“IWC”) Wage Order(s). Accordingly, Plaintiff, on behalf of the State of California, brings this
10 representative action to recover civil penalties for the California Labor and Workforce
11 Development Agency (“LWDA”), himself, and all other aggrieved employees—i.e., non-exempt
12 employees who worked for Defendant in California during the statute of limitations period—
13 predicated on Defendant’s failure to provide legally compliant meal periods, rest breaks and
14 recovery periods and failure to provide compensation for missed and otherwise unlawful meal
15 periods, rest breaks and recovery periods, unpaid regular, overtime, and minimum wage
16 compensation, failure to timely pay wages, failure to pay all wages owed and due to discharged or
17 quitting non-exempt employees, failure to maintain required records, failure to provide accurate
18 itemized wage statements, failure to provide paid sick leave, failure to provide COVID-19
19 supplemental paid sick leave, failure to reimburse for employment-related expenses, failure to
20 provide suitable seating and resting facilities and failure to provide notice of employer-related
21 information at the time of hiring.

22 2. Defendant is an agricultural company that grows, produces, and packages
23 vegetables on its farms located in central and northern California. Defendant is a private, for-
24 profit business.

25 3. As a private, for-profit business, Defendant implemented common policies and
26 practices that resulted in systemic violations of California’s wage and hour laws. Defendant has
27 failed to implement adequate practices to protect the rights of its employees, particularly in light
28 the nature of its business, which is to maximize profits. Moreover, Defendant fails to ensure

1 compliance with California's wage and hour laws.

2 4. For instance, Defendant has implemented unlawful written policies with respect to
3 meal and rest breaks. Defendant also requires its non-exempt employees, who are informed that
4 the needs of the businesses take top priority, to work through meal and rest breaks, to take
5 untimely meal periods and work through portions of their meal periods without being permitted
6 additional time to complete their meal periods. As a result, Plaintiff and other non-exempt
7 employees have been denied the ability to take the meal and rest breaks that they were and are
8 legally entitled to take.

9 5. Moreover, Defendant has uniformly failed to pay Plaintiff and other non-exempt
10 employees proper overtime wages due the fact that it improperly rounds the time worked by
11 Plaintiff and other non-exempt employees in favor of Defendant, it calculates the highest regular
12 rate of pay based upon nondiscretionary bonus payments, and willfully turns a blind eye to off-
13 the-clock work that Plaintiff and other non-exempt employees perform as a direct consequence of
14 Defendant's understaffing and imposition of an unreasonable workload.

15 6. Also, Defendant failed to provide for supplemental COVID-19 sick leave to
16 Plaintiff and the other aggrieved employees and list the available supplemental COVID-19 sick
17 leave on their wage statements or provide a separate writing providing the available amount and
18 amount of sick leave taken by Plaintiff and the other non-exempt employees.

19 **JURISDICTION AND VENUE**

20 7. The Superior Court of the State of California has jurisdiction in this matter because
21 Plaintiff is a citizen and resident of the State of California, and Defendant is a citizen and resident
22 of, and/or regularly conducts business in, the State of California.

23 8. Venue is proper in this judicial district and the County of Monterey, California
24 because Defendant conducts business and has facilities in the County of Monterey and many of
25 Defendant's unlawful actions and omissions, as set alleged herein, occurred in the County of
26 Monterey. Specifically, Defendant maintains and operates a facility in Salinas, California, which
27 is located in the County of Monterey.

28 9. Defendant employed Plaintiff and other aggrieved employees within the State of

1 California and the unlawful acts alleged herein have a direct effect on Plaintiff and other aggrieved
2 employees.

3 **THE PARTIES**

4 10. Plaintiff resides in the State of California and is a former employee of Defendant.
5 At all relevant times herein, Plaintiff worked as a sanitation worker for Defendant at its facilities
6 located in Salinas, California.

7 11. Defendant is, and at all times relevant herein was, a limited liability company
8 organized and existing under the laws of the State of California. On information and belief,
9 Defendant is authorized to conduct business in the State of California and does conduct business
10 in the County of Monterey.

11 12. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
12 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff
13 is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
14 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other
15 aggrieved employees' injuries and damages, as alleged herein, were proximately caused by the
16 conduct of such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint
17 to allege the true names and capacities of such DOE defendants when ascertained.

18 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
19 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
20 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
21 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
22 employer and/or joint employer of Plaintiff and the other aggrieved employees.

23 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
24 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, integrated
25 enterprise, proxy, managing agent, and/or principal of the co-Defendants, and in performing the
26 acts mentioned below was acting, at least in part, within the course and scope of that authority as
27 such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or
28 principal with the permission and consent of the above co-Defendants. Plaintiff also alleges that

1 the acts of each Defendant are legally attributable to the other Defendants.

2 15. Plaintiff is informed and believes, and based thereon alleges, that each of the
3 Defendants sued herein were, at all relevant times, the employer, owner, shareholder, principal,
4 joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining
5 Defendants, and were acting, at least in part, within the course and scope of such employment and
6 agency, with the express and implied permission, consent and knowledge, approval and/or
7 ratification of the other Defendants. The above co-Defendants, managing agents, and supervisors,
8 aided, abetted, condoned, permitted, approved, authorized, and/or ratified the unlawful acts
9 described herein.

10 16. As a direct and proximate result of the unlawful actions of Defendant, Plaintiff and
11 the other aggrieved employees have suffered and continue to suffer penalties in amounts as yet
12 unascertained but subject to proof at trial and within the jurisdiction of this Court.

13 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

14 17. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
15 California Labor Code §§ 2698-2699.5, Plaintiff brings this action on behalf of himself and all
16 other aggrieved employees, e.g., current and former non-exempt employees of Defendant who are
17 California citizens and performed work for Defendant in the State of California at any time within
18 the period beginning one (1) year prior to the filing of the Complaint in this action, or as
19 otherwise permitted under PAGA, and ending at the time this action settles or proceeds to final
20 judgment (“statute of limitations period”).

21 18. On July 24, 2023, Plaintiff gave written notice by certified mail pursuant to
22 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
23 (“LWDA”) and Defendant, of the specific provisions of the California Labor Code and IWC
24 Wage Order alleged to have been violated, including the facts and theories to support the alleged
25 violations. Plaintiff has not received any response from the LWDA. As Plaintiff has waited more
26 than sixty-five (65) days from the July 24, 2023 postmark date of his written notice before filing
27 this action, Plaintiff has complied with all of the requirements set forth in California Labor Code
28 § 2699.3 to commence a representative action under PAGA.

1 **FACTUAL ALLEGATIONS**

2 **Failure to Provide Required Meal Periods**

3 **[Cal. Lab. Code §§ 226.7, 512, 558; § 11 of the Applicable IWC Wage Order]**

4 19. During the statute of limitations period, as part of Defendant's illegal policies and
5 practices to minimize labor costs and maximize corporate profits, Defendant has required,
6 permitted or otherwise suffered Plaintiff and aggrieved employees to perform work during their
7 meal periods, to completely skip their meal periods, to take late and short meal periods, and
8 Defendant has otherwise failed to provide the required meal periods to Plaintiff and aggrieved
9 employees as required under California Labor Code §§ 226.7, 512, 558 and § 11 of the applicable
10 IWC Order.

11 20. Defendant has implemented several practices that have caused Plaintiff and
12 aggrieved employees to systematically miss and otherwise take non-compliant meal periods.
13 Defendant systematically understaffs its facilities such that its non-exempt employees are given
14 so much work to complete that they regularly miss or take non-compliant meal periods. As a
15 direct consequence of this understaffing, Plaintiff and aggrieved employees have so much work to
16 complete within their scheduled shifts that they are forced to skip their meal periods altogether, to
17 take them after working longer than five (5) hours, to perform work during their meal periods, or
18 return to work after taking less than a thirty (30) minute meal period. Moreover, Plaintiff and the
19 other aggrieved employees were not allowed to take a second meal period after working longer
20 than ten (10) hours or more.

21 21. There are also frequently occasions when Plaintiff and aggrieved employees need
22 to perform other duties immediately before the time during which they are legally entitled to take
23 a meal period. Pursuant to Defendant's policies, Plaintiff and aggrieved employees cannot simply
24 drop their urgent job duties to take a meal period. Consequently, Plaintiff and aggrieved
25 employees regularly miss meal periods, take late meal periods, return early from meal periods,
26 and even clock out for meal periods but continue working.

27 22. Plaintiff and aggrieved employees need to first secure permission before taking a
28 meal period despite the fact they may be scheduled to take a meal period. However, Plaintiff and

1 aggrieved employees often cannot simply stop working and take their meal period, which often
2 causes them to regularly miss and otherwise take non-compliant meal periods.

3 23. Finally, plaintiff is informed and believes that Employer failed to maintain records
4 relating to meal periods taken and “auto-deducted” meal periods and/or round meal periods to
5 make it appear that Plaintiff and the other aggrieved employees are taking full, thirty (30) minute
6 meal periods.

7 24. Despite the foregoing, Defendant has implemented a policy and practice of
8 actively discouraging the issuance of meal period premium payments, and in the process,
9 Defendant has also violated California Labor Code §§ 226.7, § 11 of the applicable IWC Wage
10 Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by
11 failing to compensate Plaintiff and aggrieved employees who were not authorized and permitted
12 to take a complete, timely, uninterrupted meal period, one additional hour of compensation at the
13 proper regular rate of pay for each workday that such a meal period was not authorized or
14 permitted.

15 **Failure to Provide Required Rest Breaks**

16 **[Cal. Lab. Code §§ 226.7, 512; § 12 of the Applicable IWC Wage Order]**

17 25. During the statute of limitations period, as part of Defendant’s illegal policies and
18 practices to minimize labor costs and maximize corporate profits, Defendant has failed to
19 authorize and permit Plaintiff and other aggrieved employees to take rest breaks as required under
20 California Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Order.

21 26. The same common policies and practices that deprive Plaintiff and other aggrieved
22 employees from taking their meal periods, as alleged herein, similarly deprive them of their
23 ability to take their first and second and third rest breaks. As alleged herein, Defendant
24 understaffs its facility which creates so much work for Plaintiff and other aggrieved employees
25 that they are frequently unable to take rest breaks. Moreover, Plaintiff and other aggrieved
26 employees need to secure permission before taking a rest break, which is often denied by
27 supervisors.

28 27. Defendant also violated California Labor Code § 226.7, § 12 of the applicable

1 IWC Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et.*
2 *seq.*, by failing to pay Plaintiff and other aggrieved employees who were not provided with a rest
3 break, in accordance with the applicable wage order, one additional hour of compensation at the
4 proper regular rate of pay for each workday that a rest break was not provided.

5 **Failure to Provide Required Recovery Periods**

6 **[Cal. Lab. Code §§ 226.7; California Code of Regulations, Title 8, Section 3395]**

7 28. At all times relevant herein, as part of Defendant's illegal payroll policies and
8 practices to deprive their non-exempt employees of all wages earned and due, Defendant failed to
9 permit Plaintiff and the aggrieved employees to take recovery periods as required under Cal. Lab.
10 Code § 226.7 and California Code of Regulations, Title 8, Section 3395. Defendant was and is
11 required to provide recovery or "cooldown" periods to non-exempt employees like Plaintiff and
12 his coworkers, who work outdoors performing manual labor, in order to prevent heat illness.

13 29. Plaintiff and the other aggrieved employees work outdoors, performing intense
14 manual labor outdoors. The work is performed over the course of many hours in temperatures
15 regularly exceeding 80 degrees Fahrenheit, and often up to 100 degrees Fahrenheit. Despite these
16 work conditions, Defendant failed to implement an adequate policy or practice of providing
17 recovery periods to its non-exempt employees. Defendant has similarly failed to make any effort
18 to comply with heat illness prevention regulations by providing places of shade for recovery
19 periods or by supplying sufficient amounts of drinking water. For example, there are times when
20 Defendant does not provide Plaintiff and the other aggrieved employees with drinking water
21 during an entire workweek. As with meal and rest breaks, Defendant did not provide Plaintiff and
22 aggrieved employees with any written documents informing them of their rights to take recovery
23 periods, and thus they did not take them.

24 30. Defendant further violated Cal. Lab. Code §226.7, and the California Unfair
25 Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to play Plaintiff and
26 aggrieved employees who were not provided with a recovery period, one additional hour of
27 compensation at the proper regular rate of pay for each workday that a recovery period was not
28 provided.

1 **Failure to Pay Overtime Wages**

2 **[Cal. Lab. Code §§ 510, 1194, 1198; § 3 of the Applicable IWC Wage Order]**

3 31. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC
4 Order, Defendant is required to compensate Plaintiff and other aggrieved employees for all
5 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
6 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first
7 eight (8) hours on the seventh consecutive workday, with double time for all hours worked in
8 excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours
9 on the seventh consecutive day of work in any workweek.

10 32. Plaintiff and other aggrieved employees are current and former non-exempt
11 employees entitled to the protections of California Labor Code §§ 510, 1194, and § 3 of the
12 applicable IWC Order. During the statute of limitations period, Defendant has failed to
13 compensate Plaintiff and other aggrieved employees for all overtime hours worked as required
14 under the foregoing provisions of the California Labor Code and IWC Wage Order by, among
15 other methods: failing to pay overtime at one and one-half (1½) or double the regular rate of pay
16 as provided by California Labor Code §§ 510, 1194 and § 3 of the applicable IWC Order,
17 requiring, permitting or suffering Plaintiff and other aggrieved employees to work off-the-clock,
18 and to work through meal and rest breaks, but not compensating them for this time, improperly
19 calculating the highest regular rate of pay based on nondiscretionary bonus payments, shift
20 differentials and other remuneration, illegally rounding the hours worked by Plaintiff and the
21 other aggrieved employees to the benefit of Defendant resulting in the underpayment of wages to
22 Plaintiff and the other aggrieved employees; and other methods to be discovered.

23 33. Defendant has knowingly and willfully refused to perform its obligations to
24 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
25 violation of California Labor Code §§ 510, 1194 and 1198 and § 3 of the applicable IWC Order.

26 **Failure to Pay Minimum Wages**

27 **[Cal. Lab. Code §§ 1194, 1197; § 4 of the IWC Wage Orders]**

28 34. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage

1 Order, payment to an employee of less than the applicable minimum wage for all hours worked in
2 a payroll period is unlawful.

3 35. During the statute of limitations period, the hourly rates for Plaintiff and other
4 aggrieved employees were precisely at California minimum wage. Based on this common practice,
5 Defendant failed to pay Plaintiff and other aggrieved employees minimum wages for all hours
6 worked by requiring, permitting or suffering Plaintiff and other aggrieved employees to work off
7 the clock, such as requiring them to work through meal and rest breaks but not compensating them
8 for this time, and failing to include this time in all hours worked, illegally rounding the time worked
9 by Plaintiff and the other aggrieved employees to the detriment of Defendant resulting in the
10 underpayment of wages; and other methods to be discovered.

11 36. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and §
12 4 of the applicable IWC Wage Order. As a proximate result of the aforementioned violations,
13 Plaintiff and other aggrieved employees have been damaged in an amount according to proof at
14 trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other
15 applicable law, Plaintiff and other aggrieved employees are entitled to recover the unpaid balance
16 of wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs
17 of suit.

18 **Failure to Timely Pay Wages During Employment**

19 **[Cal. Lab. Code § 204]**

20 37. Pursuant to California Labor Code § 204, for all labor performed between the 1st
21 and 15th days of any calendar month, Defendant is required to pay its nonexempt employees
22 between the 16th and 26th day of the month during which the labor was performed. California
23 Labor Code § 204 also provides that for all labor performed between the 16th and 26th days of any
24 calendar month, Defendant is required to pay its non-exempt employees between the 1st and 10th
25 day of the following calendar month. In addition, California Labor Code § 204 provides that all
26 wages earned for labor in excess of the normal work period shall be paid no later than the payday
27 of the next regular payroll period.

28 38. During the statute of limitations period, Defendant has knowingly and willfully

1 failed to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by
2 the next regular payroll period as required by California Labor Code § 204, including but not limited
3 to, compensation for missed meal and rest breaks, proper overtime wages due to an unlawful
4 calculation of the regular rate of pay, and for work performed off-the-clock.

5 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

6 **[Cal. Lab. Code §§ 201 - 203]**

7 39. Pursuant to California Labor Code § 201, 202 and 203, Defendant is required to
8 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
9 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
10 at the time of discharge are due and payable immediately.

11 40. Furthermore, pursuant to California Labor Code § 202, Defendant is required to
12 pay all accrued wages due to an employee no later than 72 hours after the employee quits his or
13 her employment, unless the employee provided 72 hours previous notice of his or her intention to
14 quit, in which case the employee is entitled to his or wages at the time of quitting.

15 41. California Labor Code § 203 provides that if an employer willfully fails to pay, in
16 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or
17 who quits, the employers is liable for waiting time penalties in the form of continued
18 compensation to the employee at the same rate for up to 30 workdays.

19 42. During the statute of limitations period, Defendant has willfully failed to pay
20 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance
21 with California Labor Code §§ 201 and 202. Defendant does not have a sufficient policy to
22 provide Plaintiff and other aggrieved employees with their final paychecks within the timeframes
23 required under California law. In addition, because Defendant has failed and continues to fail to
24 properly compensate Plaintiff and other aggrieved employees for all hours worked when due,
25 overtime wages, and compensation for non-compliant meal and rest breaks, Defendant has also
26 willfully failed and continues to fail to pay accrued wages and other compensation to Plaintiff and
27 other aggrieved employees in accordance with California Labor Code §§ 201 and 202.
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1 amount taken for aggrieved employees, and other violations yet to be discovered.

2 45. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
3 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements
4 in accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

5 46. Plaintiff and other aggrieved employees suffered injury as a result of Defendant's
6 failure to provide timely and accurate itemized wage statements, which prevented them from
7 discovering the scope and extent of Defendant's violations of California wage and hour laws,
8 prevented them from being able to determine the gross wages earned, the total hours worked, all
9 deductions made, the net wages earned, all applicable hourly rates in effect during each pay period
10 and the corresponding number of hours worked at each hourly rate, the accurate regular rate of pay,
11 available regular sick leave and supplemental COVID-19 sick leave and amount taken, and other
12 violations yet to be discovered.

13 **Failure To Provide Mandatory Sick Leave**

14 47. Pursuant to California Labor Code §246, any employee who works in the State of
15 California and who works more than "30 or more days within a year ... is entitled to be paid sick
16 days ..." Labor Code §246(i) requires an employer to provide an employee with "written notice"
17 that sets for the "amount of sick leave available" on the employee's wage statement pursuant to
18 Labor Code §226 or "..., in a separate writing provided on the designated pay date with the
19 employee's payment of wages."

20 48. Defendant failed to comply with Labor Code Section §246 by not providing Plaintiff
21 and the other aggrieved employees with sick pay. Defendant also failed to comply with Labor Code
22 §246(i) by not providing Plaintiff and the other aggrieved employees with their available sick leave
23 and balance of sick leave. As such, Defendant has violated California Labor Code § 246.

24 **Failure to Pay COVID-19 Supplemental Sick Leave**

25 **[Cal. Lab. Code §§ 248.1, 248.2 and 248.6]**

26 49. During the Statute of Limitations Period, Plaintiff is informed and believes from
27 January 1, 2022, through the present, Defendant employed 26 or more aggrieved employees.

28 50. Defendant failed to provide 80 hours of COVID-19 Supplemental Paid Sick leave

1 and compensate aggrieved employees at their regular rate of pay for supplemental sick leave, i.e.,
2 their highest regular rate of pay, taking into consideration non-discretionary bonuses, etc., in
3 violation of California Labor Code § 248.1(b)(3)(A) and §248.6. Defendant also failed to provide
4 COVID-19 Supplemental Sick Leave to aggrieved employees in addition to regular sick leave, in
5 violation of California Labor Code § 248.1(b)(2)(D). Defendant also failed to accurately reflect any
6 offset and/or the current amount of COVID-19 Supplemental Sick Leave available to aggrieved
7 employees on their wage statements, in violation of California Labor Code §§ 248.1(b)(2)(D),
8 248.2, 248.6, or provide a separate handout to Plaintiff and the other aggrieved employees depicting
9 the amount of COVID-19 supplemental sick leave amounts available and taken.

10 **Failure to Provide Suitable Resting Facilities**

11 **[All Applicable IWC Wage Orders, § 13]**

12 51. During the statute of limitations period, Defendant fails to provide: “Suitable
13 resting facilities shall be provided in an area separate from the toilet rooms and shall be available
14 to employees during work hours.”

15 52. Defendant has failed to provide suitable resting facilities by not providing a break
16 room, or any other appropriate designated area on the work premises, where Plaintiff and the
17 other aggrieved employees could take meal periods and rest breaks. Moreover, when aggrieved
18 employees are out in the field, Defendant fails to provide suitable resting facilities such as seats,
19 tents, portable toilets or other similar devices to Plaintiff and the other aggrieved employees.

20 **Failure to Provide Suitable Seating**

21 **[All Applicable IWC Wage Orders, § 14]**

22 53. During the Statute of Limitations, Defendant failed to provide suitable seating for
23 Plaintiff and the other aggrieved. Defendant is required to provide suitable seating to Plaintiff
24 and the other aggrieved employees as follows:

25 “(A) All working employees shall be provided with suitable seats
26 when the nature of the work reasonably permits the use of seats.

27 (B) When employees are not engaged in the active duties of their
28 employment and the nature of the work requires standing, an adequate
number of suitable seats shall be placed in reasonable proximity to the

work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

54. Defendant has failed to provide suitable seating by not providing any seats or stools in the fields and in other locations worked by Defendant and other aggrieved employees. The nature of the work reasonably permits the use of seats when working. To the extent that the use of seats could interfere with their work duties, at all times herein it is and has been reasonable for Defendant to place seats in reasonable proximity to the areas worked by Plaintiff and other aggrieved employees when doing so would not interfere with their job duties.

Failure to Indemnify Employees for Necessary Expenditures

Incurred in Discharge of Duties

[Cal. Lab. Code § 2802]

55. California Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer.

56. During the statute of limitations period, Defendant required Plaintiff and other aggrieved employees to indemnify them for safety equipment and personal protective equipment during the COVID-19 pandemic, in violation of California Labor Code §§226, 2802 and the applicable IWC Wage Order §9. This resulted in gross underpayment of Plaintiff’s and other aggrieved employees’ actual gas/mileage expenditures.

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Lab. Code § 2698, *et seq.*]

(Against all Defendants)

57. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 56.

58. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other current and former non-exempt employees of Defendant pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff was employed by Defendant and one or more of the alleged

1 California Labor Code violations was committed against Plaintiff during the statute of limitations
2 period.

3 59. Pursuant to California Labor Code § 2699, Plaintiff seeks to recover civil penalties
4 under the PAGA, for Defendant's violations of the provisions of the California Labor Code and
5 IWC Wage Order alleged herein.

6 60. All civil penalties sought and recovered under this action will be allocated as
7 follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff
8 and aggrieved employees.

9 61. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to
10 California Labor Code § 2699(g)(1).

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff, on behalf of himself and the State of California, prays for relief
13 against Defendant as follows:

- 14 1. For civil penalties pursuant to California Labor Code § 2699 according to proof;
- 15 2. For reasonable attorneys' fees and costs pursuant to California Labor Code §
16 2699(g)(1), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions
17 providing for attorneys' fees and costs; and
- 18 3. For such further relief that the Court may deem just and proper.

19
20 DATED: October 2, 2023

LAW OFFICE OF SCOTT E. WHEELER

21
22 By: 

Scott E. Wheeler

23 Justin A. Wheeler