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Situated Employees

UNITED STATES SUPERIOR COURT

EASTERN DISTRICT OF CALIFORNIA—FRESNO DIVISION

SARA REYES on behalf of herself, and
those similarly situated and the State of
California,

Plaintiff,

vs.

FIVE DIAMOND COLD STORAGE, INC.,
GROW SMART LABOR, INC., PEDRO
ARELLANO-MOYA, and JORGE ESTEBAN
FUENTES

Defendants.

Case No.

**CLASS ACTION AND PAGA
COMPLAINT FOR:**

1. Migrant and Seasonal Agricultural Worker Protection Act (AWPA);
2. Failure to Pay Nonproductive Time Separate from Piece-Rate;
3. Failure to Provide Meal Periods or Pay Additional Wages in Lieu Thereof;
4. Failure to Pay Minimum Wages;
5. Failure to Pay Overtime Premium Wages;
6. Waiting Time Penalties;
7. Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions;
8. Violation of Unfair Competition Law, California Business & Professions Code §§17200 *et seq.*; and
9. Penalties Under California Labor Code § 2698 *et seq.*

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Plaintiff Sara Reyes (“Plaintiff”) brings this action against Defendants Grow
3 Smart Labor, Inc., Five Diamond Cold Storage, Inc., Pedro Arellano-Moya, and Jorge Esteban
4 Fuentes (“Defendants”), individually and on behalf of all other similarly situated individuals
5 employed under common circumstances and facts. The allegations made in this Complaint are
6 based on Plaintiff’s knowledge, except those allegations made on information and belief, which
7 are based on the investigation of their counsel.

8 2. This is a Class Action pursuant to Federal Rule of Civil Procedure Rule 23 and a
9 collective action pursuant to the Migrant and Seasonal Agricultural Workers Protection Act
10 (“AWPA”) and the California Private Attorneys General Act (“PAGA”). Plaintiff brings this
11 action on behalf of a class of workers currently or formerly employed by Defendants in
12 California. Plaintiff seeks to vindicate the rights afforded to workers under AWPA, California
13 law, including the California Labor Code and Wage Orders, and California’s Unfair Competition
14 Law (“UCL”).

15 3. This action arises out of Defendants’ failure to pay non-exempt employees all
16 wages it owed them by failing to pay for rest and recovery periods and other nonproductive time
17 separate from any piece-rate compensation and failing to provide non-exempt employees with
18 legally compliant meal periods. As a result, Defendants failed to pay non-exempt employees,
19 including Plaintiff and the class, all wages owed to them upon discharge (including seasonal
20 layoffs) or resignations in conformance with California law.

21 4. Defendants have employed Plaintiff and the class directly and are sued as joint
22 employers, agents, and/or alter egos. Defendants are also sued as “persons,” pursuant to
23 California Labor Code §§ 18, 558, 558.1, and 2699 *et seq.*, who violated or caused to be violated
24 the Labor Code and other regulations governing wages, hours, and conditions of employment.
25 Liability under Labor Code §§ 18, 558, 558.1, and 2699 *et seq.* does not require individual
26 defendants be employers.

1 5. Plaintiff further alleges Defendants Pedro Arellano-Moya and Jorge Esteban
2 Fuentes are each a “person acting on behalf of an employer” within the meaning of Labor Code
3 § 558.1 who violated or caused to be violated California Labor Code §§ 203, 226, 226.2 226.7,
4 1194, and 2802, as well as the provisions “regulating minimum wages or hours and days of
5 work” as enumerated in applicable IWC wage order. As such, Defendants Pedro Arellano-Moya
6 and Jorge Esteban Fuentes can be held liable as an employer for such violations sustained by
7 Plaintiff and the class that occurred after January 1, 2016, pursuant to labor code § 558.1.

8 6. Plaintiff is informed and believes and thereon alleges each Defendant is
9 responsible in some manner for the occurrences herein alleged, and that the damages herein
10 alleged were actually and proximately caused by each Defendant’s conduct.

11 7. The core violations Plaintiff alleges against Defendants for herself and the class
12 are: (1) failure to provide meal periods or appropriately compensate employees in lieu thereof;
13 (2) failure to pay minimum and premium overtime; (3) failure to pay/compensate non-exempt
14 employees for rest and recovery periods and/or other nonproductive time separate from any
15 piece-rate compensation; (4) failure to pay all wages owed upon separation from employment;;
16 and (5) failure to provide accurate, itemized wage statements. Additional derivative violations
17 are described below.

18 8. Defendants have refused to pay all wages due and owed to Plaintiff and Class
19 Members under the express provisions of the California Labor Code, which, in turn, resulted in
20 additional Labor Code violations entitling Plaintiff and the class to prompt payment of wages
21 and penalties.

22 9. Plaintiff, for herself and the class, also seek injunctive relief requiring Defendants
23 to comply with all applicable California labor laws and regulations in the future and preventing
24 Defendants from engaging in and continuing to engage in unlawful and unfair business practices.
25 Plaintiff also seeks declaratory relief enumerating Defendants’ violations so Defendants and the
26 public have clarity and guidance with regards to Defendants’ future employment practices.

PARTIES

10. Plaintiff Sara Reyes (“Reyes”) is a resident of Fresno County, California. At all relevant times herein, she has been employed directly or jointly by Defendants, as an employee on land owned, leased, and/or operated in and around Tulare County, California, and has been employed by Defendants as a non-exempt employee. Plaintiff Reyes was hired by Defendants to work within the counties covered by Intradistrict Venue in the Fresno Division of the Eastern District pursuant to Local Rule 120(d). During the relevant time period, Plaintiff Reyes worked for Defendants within the Intradistrict Venue of the Fresno Division of the Eastern District, performing services covered by an applicable Wage Order during the Class Period. Plaintiff Reyes suffered injury in fact and loss of property as a result of Defendants’ conduct described in this Complaint. As such, she is an aggrieved employee.

11. Plaintiff and the employees whom Plaintiff seeks to represent were regularly subjected to, or had personal knowledge of, the violations described in this Complaint.

12. The following allegations as to Defendants are made on information and belief, and are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

13. At all times relevant, Defendant Five Diamond Cold Storage, Inc. was a California Corporation which conducts business in and around the district, including in Tulare County. On information and belief, Defendant Five Diamond Cold Storage, Inc. has hundreds of employees and provides employees in the agricultural industry. At the core of Defendant Five Diamond Cold Storage, Inc.’s violations are: systematic failure to keep accurate time and payroll records; failing to record rest and recovery periods separate from piece-rate units, and/or failing to accurately calculate compensation for rest and recovery periods; failing to record and compensate piece-rate workers for nonproductive time from piece-rate units; requiring, suffering or permitting employees to perform unpaid work off-the-clock; failure to pay minimum wage and premium /overtime wages; refusing to provide proper meal periods or to provide premium

1 wages in lieu thereof, and failing to provide accurate wage statements; and failing pay of all
2 wages owed upon separation from employment.

3 14. At all times relevant, Defendant Grow Smart Labor, Inc. was a California
4 Corporation which conducts business in and around the district including, in Tulare County. On
5 information and belief, Defendant Grow Smart Labor, Inc. has hundreds of employees and
6 provides employees in the agricultural industry. At the core of Defendant Grow Smart Labor,
7 Inc.'s violations are: systematic failure to keep accurate time and payroll records; failing to
8 record rest and recovery periods separate from piece-rate units, and/or failing to accurately
9 calculate compensation for rest and recovery periods; failing to record and compensate piece-rate
10 workers for nonproductive time from piece-rate units; requiring, suffering or permitting
11 employees to perform unpaid work off-the-clock; failure to pay minimum wage and
12 premium/overtime wages; refusing to provide proper meal periods or to provide premium wages
13 in lieu thereof, and failing to provide accurate wage statements; and failing pay of all wages
14 owed upon separation from employment.

15 15. At all times relevant, Defendant Pedro Arellano-Moya was, on information and
16 belief, the Chief Executive Officer for Defendant Grow Smart Labor, Inc. and was in charge of
17 making major corporate decisions and managing the operations of the corporation during the
18 relevant time period. As such, he was on notice, whether actual or constructive, of all of the
19 violations described above, and failed to prevent or address them. On information and belief,
20 Defendant Pedro Arellano-Moya is an owner, director, officer, or managing agent of Defendant
21 Grow Smart Labor, Inc. who controlled and caused the violations at issue here either by making
22 illegal policies, implementing illegal policies, or failing to correct illegal policies. Defendant
23 Pedro Arellano-Moya is therefore liable as a person acting on behalf of Defendant Grow Smart
24 Labor, Inc. under California Labor Code § 558.1. Plaintiff alleges Defendant Pedro Arellano-
25 Moya is liable under PAGA and Labor Code §§ 558, 1197.1, 2699(f) as a "person" who violated
26 or caused to be violated the Labor Code and Wage Orders listed in this complaint, by exercising
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1 control over and involvement in the creation and/or implementation of the wage and hour
2 practices and policies that are the subject matter of this complaint.

3 16. At all times relevant, Defendant Jorge Esteban Fuentes was, on information and
4 belief, the Chief Financial Officer for Defendant Grow Smart Labor, Inc. and was in charge of
5 making major corporate decisions and managing the operations of the corporation during the
6 relevant time period. As such, he was on notice, whether actual or constructive, of all of the
7 violations described above, and failed to prevent or address them. On information and belief,
8 Defendant Jorge Esteban Fuentes is an owner, director, officer, or managing agent of Defendant
9 Grow Smart Labor, Inc. who controlled and caused the violations at issue here either by making
10 illegal policies, implementing illegal policies, or failing to correct illegal policies. Defendant
11 Jorge Esteban Fuentes is therefore liable as a person acting on behalf of Defendant Grow Smart
12 Labor, Inc. under California Labor Code § 558.1. Plaintiff alleges Defendant Jorge Esteban
13 Fuentes is liable under PAGA and Labor Code §§ 558, 1197.1, 2699(f) as a “person” who
14 violated or caused to be violated the Labor Code and Wage Orders listed in this complaint, by
15 exercising control over and involvement in the creation and/or implementation of the wage and
16 hour practices and policies that are the subject matter of this complaint.

17 17. The acts and failures to act alleged herein were duly performed by and
18 attributable to all Defendants, each acting as a successor, agent, alter ego, employee, indirect
19 employer, joint employer, and/or integrated enterprise, at the direction and control of the others,
20 except as specifically alleged otherwise. Said acts and failures to act were within the scope of
21 such agency and/or employment, and each Defendant participated in, approved of, and/or ratified
22 the unlawful acts and omissions by the other Defendant complained of herein.

23 18. On information and belief, Plaintiff further asserts the damages herein alleged
24 were actually and proximately caused by each Defendants’ conduct.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction based on federal question jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1854, covering claims arising under AWP (29 U.S.C. § 1801 *et seq.*).

20. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a), because these claims are so closely related to the federal wage and hour claims that they form part of the same case or controversy under Article III of the United States Constitution.

21. This Court is empowered to grant declaratory relief pursuant to 28 U.S.C. § 2201.

22. Venue is proper in the Eastern District of California pursuant to 28 U.S.C. § 1391 because this District is the district in which at least one of the Defendants and/or the Plaintiff resides and a district in which a substantial part of the events or omissions giving rise to the claims occurred.

INTRADISTRICT ASSIGNMENT

23. This case is properly assigned to the Fresno Division of this Court because the action arose in Tulare County, California. Local Rule 120(d).

FACTUAL ALLEGATIONS

24. This is a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure to vindicate the rights afforded the class by AWP, California Labor Code §§ 201, 202, 203, 204, 210, 214, 216, 218, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 512, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 1199, and California Business & Professions Code §§ 17200 *et seq.* and is brought on behalf of Plaintiff and a Class comprised of all current and former non-exempt employees of Defendants. The claims of this lawsuit spring from a pattern of Defendants' misconduct and wrongdoing that is a characteristic of the labor system Defendants utilize, where unpaid and improperly paid labor, as alleged herein, is a common business practice, and where

1 the employer externalizes the cost of business expenditures upon Defendants' employees.
2 Defendants' actions in this case demonstrate a systematic disregard for the rights afforded to
3 Plaintiff and the class under California wage and hour law. The following paragraphs detail
4 specific violations of law giving rise to this action.

5 25. For at least four years prior to the filing of this action and through to the present
6 (liability period for the UCL cause of action), Defendants have maintained and enforced against
7 Plaintiff and the class the following unlawful practices and policies in violation of California
8 wage and hour laws, including but not limited to:

- 9 a. failing to accurately calculate pay for rest and recovery periods and failure
10 to record and compensate for other nonproductive time separate from any
11 piece-rate compensation;
- 12 b. failing to document on itemized statements the total hours of compensable
13 rest and recovery periods and nonproductive time, the rate of
14 compensation, and the gross wages paid for those periods and time during
15 the pay period.
- 16 c. requiring Class Members, including Plaintiff, to work at least five (5)
17 hours without a timely, thirty-minute, uninterrupted meal period, and
18 failing to pay such employees one (1) hour of additional wages at the
19 employees' regular rate of compensation for each workday that the meal
20 period was not provided, in violation of California law and policy;
- 21 d. failing to pay minimum and overtime premium wages to Plaintiff and the
22 class by providing piece-rate compensation and failing to accurately
23 calculate compensation for rest and recovery periods, and failure to record
24 and compensate for nonproductive time separate from piece-rate units;
- 25 e. failing to provide class members, including Plaintiff, with accurate
26 itemized wage statements in violation of California law and public policy;

1 California overtime wage requirements, resulting in loss of property to Plaintiff and the class as a
2 result of Defendants' payroll policies.

3 28. Under the timekeeping and record-keeping policies, Defendants willfully
4 provided inaccurate itemized wage statements that do not reflect all "hours worked" and wages
5 earned. Further, Defendants also failed to accurately calculate compensation for rest and
6 recovery periods and failed to record other nonproductive time separate from any piece-rate
7 compensation in violation of Labor Code § 226.2. As such, Defendants failed to maintain
8 accurate time-keeping record and wage statements.

9 29. Under their meal period policies, Defendants failed to provide employees: (a) at
10 least one (1) meal period prior to the fifth hour and/or two (2) meal periods for shifts greater than
11 ten hours, (b) net thirty-minute meal periods, and/or (c) timely meal periods. Further,
12 Defendants' policy is to not pay the premium wages owed to workers for missed, incomplete,
13 and/or untimely meal periods.

14 30. Defendants failure to compensate non-exempt employees for all "hours worked,"
15 failure to authorize and permit requisite meal and failure to pay premium meal period wages,
16 failure to pay for all hours worked at the regular rate or required overtime premium rate, and
17 failure to pay wages at termination in addition to the other violations alleged above, during all
18 relevant times herein was intentional, willful, and deliberate.

19 31. Plaintiff alleges Defendants are employers with respect to Plaintiff or similarly
20 situated employees and/or are liable for the payment of wages to Plaintiff under California Labor
21 Code § 2810.3.

22 32. On information and belief, Defendants were on notice of the improprieties alleged
23 and/or have intentionally, deliberately, and willfully carried out these unlawful and unfair
24 business practices.

25 33. Defendants have made it difficult to account with precision for the unlawfully
26 withheld wages due to Plaintiff and the class during all relevant times herein, because
27 Defendants did not fully implement and preserve a record-keeping method to accurately record
28

1 all hours worked and wages earned by their employees, or manipulated such record-keeping
2 method for Defendants' advantage, in violation of California Labor Code §§ 226 and 1174(d),
3 and applicable IWC Wage Orders.

4 34. Plaintiff alleges Defendants are liable to her and the Class for the violations
5 described herein as employers and/or "persons" who violated the Labor Code and IWC
6 regulations or caused such violations. Labor Code §§ 558 & 2698 *et seq.*

7 35. Defendants failed to comply with California Labor Code § 226(a) by failing to
8 itemize in wage statements all wages earned and by failing to accurately report total hours
9 worked by Plaintiff and members of the proposed Class. Plaintiff and Class Members are
10 therefore entitled to statutory penalties not to exceed \$4,000 for each employee pursuant to
11 Labor Code § 226(e).

12 36. Plaintiff brings this action on behalf of herself and all others similarly situated as
13 a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure because there is a well-
14 defined community of interest in litigation and the proposed class is easily ascertainable. Plaintiff
15 seeks to represent the following Class, composed of, and defined, as follows:

16 All non-exempt workers who are or have been employed by Defendants in
17 the State of California at any time within four (4) years prior to the filing of
18 the original complaint in this action and the final disposition of this action.

19 37. On information and belief, the legal and factual issues are common to and
20 affected all Class Members. Plaintiff may amend the above class definition as permitted or
21 required by this Court.

22
23 **NUMEROSITY**

24 38. The potential members of the Class as defined are so numerous that joinder of all
25 the members of the Class is impracticable. While the precise number of Class Members has not
26 been determined at this time, Plaintiff is informed and believes Defendants have employed
27
28

1 hundreds of employees in the State of California. These employees have been affected by
2 Defendants' unlawful practices as alleged herein.

3 39. Upon information and belief, Plaintiff alleges Defendants' employment records
4 would provide information as to the number and location of all Class Members. Joinder of all
5 members of the proposed Class is not practicable.

6
7 **COMMONALITY**

8 40. There are questions of law and fact common to the Class predominating over any
9 questions affecting only individual Class Members. These common questions of law and fact
10 include, without limitation:

- 11 a. Whether Defendants violated §§ 17200 *et seq.* of the Business and
12 Professions Code by the violation of California labor laws;
13 b. Whether Defendants violated the California Labor Code and Wage
14 Orders as a result of the allegations described in this complaint;
15 c. Whether Defendants violated the California Labor Code and Wage
16 Orders by compensating Plaintiff and other Class Members at hourly
17 wage rates below (1) the minimum wage rate and (2) double minimum
18 wage rate;
19 d. Whether Defendants violated the California Labor Code and Wage
20 Orders by compensating Plaintiff and other Class Members at rates
21 below the required overtime rate;
22 e. Whether Defendants violated the California Labor Code and Wage
23 Orders by failing to provide lawful meal periods or discouraging
24 Plaintiff and Class Members from taking them and failing to pay
25 premium wages in lieu thereof, in violation of California law;
26 f. Whether Defendants violated the California Labor Code and Wage
27 Orders by failing to pay Plaintiff and other Class Members for rest and
28

1 recovery periods and other nonproductive time separate from any piece-
2 rate compensation;

3 g. Whether Defendants violated the California Labor Code and Wage
4 Orders by failing to, among other things, maintain accurate records of
5 Plaintiff and other Class Members' earned wages, work periods, hours
6 worked, and wages earned;

7 h. Whether Defendants violated the California Labor Code and Wage
8 Orders by failing to pay all earned wages due and/or premium wages
9 due and owing at the time that the employment of any Class Members,
10 including Plaintiff, ended; and

11 i. Whether Plaintiff and other Class Members are entitled to restitution,
12 wages, statutory penalties, premium wages, declaratory and injunctive
13 relief, attorneys' fees, interest, and costs, and other relief pursuant to
14 AWPAs, the California Labor Code, applicable Wage Orders, and the
15 UCL.

16
17 **TYPICALITY**

18 41. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff
19 and all members of the Class sustained injuries and damages arising out of, and were caused by,
20 Defendants' common course of conduct in violation of Federal and California laws, regulations,
21 and statutes as alleged herein.

22
23 **ADEQUACY OF REPRESENTATION**

24 42. Plaintiff will fairly and adequately represent and protect the interests of the
25 members of the Class. Counsel who represent Plaintiff are competent and experienced in
26 litigating large employment class actions.

SUPERIORITY OF CLASS ACTION

43. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the proposed Class has been damaged and is entitled to recovery by reason of Defendants' unlawful policy and/or practice of failing to compensate Class Members for all wages earned and engaging in the unlawful practices herein complained of and denying Class Members meal periods without legal compensation.

44. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. It is unlikely individual Class Members have any interest in individually controlling separate actions in this case. Class Members' lack of knowledge of the legal system and limited economic resources would deprive most Class Members of the practical opportunity to pursue their claims were this class action not certified.

45. Plaintiff is unaware of any difficulties likely to be encountered in the management of this action that would preclude its maintenance as a class action. The benefits of maintaining this action on a class basis far outweigh any administrative burden in managing the class action. Conducting the case as a class action would be far less burdensome than prosecuting numerous individual actions.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
**VIOLATION OF THE MIGRANT AND SEASONAL AGRICULTURAL WORKER
PROTECTION ACT (AWPA)**

29 U.S.C.A. § 1801 *et seq.*

(AGAINST GROW SMART LABOR, INC. AND FIVE DIAMOND COLD STORAGE, INC.)

46. Plaintiff re-alleges and incorporate the allegations of the above paragraphs as if fully stated herein.

47. Defendants intentionally violated Plaintiff's and the Class' rights under AWPA by:

- a. providing false and misleading information regarding the terms and conditions of employment of Plaintiff and Class Members, in violation of 29 U.S.C. § 1831(c);
- b. violating the terms of the working arrangement made with Plaintiff and Class Members in California, in violation of 29 U.S.C. § 1832(c); these working arrangements are contained in the IWC Wage Orders which are required to be and, actually are posted and communicated by Defendants to Plaintiff as required by the IWC Wage Orders;
- c. failing to pay wages when due for unpaid regular and overtime hours worked and for missed or non-compliant meal periods in violation of 29 U.S.C. § 1832(a).
- d. failing to provide workers with accurate, itemized written wage statements which include the correct number of hours worked; the correct total pay period earnings; and the correct net pay, in violation of 29 U.S.C. § 1831(c).

48. Plaintiff alleges Defendants communicated the terms of employment with the Class by posting IWC Wage Orders on the job site which enumerated specific obligations of the employer with regard to working conditions required by state law and, in particular, with regard

1 to: the payment of minimum wages; payment of overtime premium wages; recording keeping
2 requirements; provision of meal periods; and application of penalties. Defendants also
3 communicated a regular and overtime wage rate to employees in a variety of ways. This regular
4 and overtime wage rate was not complied with due to the underpayments described in this
5 complaint. These terms constituted the communicated working arrangement with these
6 employees, which Defendants systemically violated.

7 49. For each violation of AWP, each Class Member is entitled to recover his or her
8 actual damages or up to \$500 per violation in statutory damages. 29 U.S.C. § 1854.

9 50. Wherefore, Plaintiff and the class request relief as described herein and below.

10 **SECOND CLAIM FOR RELIEF**
11 **FAILURE TO RECORD AND COMPENSATE NONPRODUCTIVE TIME SEPARATE**
12 **FROM ANY PIECE-RATE COMPENSATION**
13 **CALIFORNIA LABOR CODE § 226.2**
14 **(AGAINST ALL DEFENDANTS)**

15 51. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

16 52. Plaintiff and, on information and belief, the Class were compensated on a piece-
17 rate basis during all pay periods.

18 53. Plaintiff and, on information and belief, the Class were not compensated for rest
19 and recovery periods and other nonproductive time separate from any piece-rate compensation as
20 required by law.

21 54. Defendants failed to include on itemized statements, the total hours of
22 compensable rest and recovery periods, the rate of compensation, and gross wages paid for those
23 periods during the pay period.

24 55. Defendants failed to include on itemized statements, the total hours of other
25 nonproductive time, the rate of compensation, and gross wages paid for that time during the pay
26 period.

27 56. Defendants failed to compensate Plaintiff and, on information and belief, the
28 Class, for rest and recovery periods at a regular hourly rate no less than the higher of an average
hourly rate, or the applicable minimum wage.

1 57. California Labor Code §226.7 provides:

2 (a) For employees compensated on a piece-rate basis during a pay
3 period, the following shall apply for that pay period:

4 (1) Employees shall be compensated for rest and recovery periods and
5 other nonproductive time separate from any piece-rate compensation.

6 (2) The itemized statement required by subdivision (a) of Section
7 226 shall, in addition to the other items specified in that subdivision,
8 separately state the following, to which the provisions of Section
9 226 shall also be applicable:

10 (A) The total hours of compensable rest and recovery periods, the rate
11 of compensation, and the gross wages paid for those periods during the
12 pay period.

13 (B) Except for employers paying compensation for other
14 nonproductive time in accordance with paragraph (7), the total hours of
15 other nonproductive time, as determined under paragraph (5), the rate
16 of compensation, and the gross wages paid for that time during the pay
17 period.

18 (3)(A) Employees shall be compensated for rest and recovery periods
19 at a regular hourly rate that is no less than the higher of:

20 (i) An average hourly rate determined by dividing the total
21 compensation for the workweek, exclusive of compensation for rest
22 and recovery periods and any premium compensation for overtime, by
23 the total hours worked during the workweek, exclusive of rest and
24 recovery periods.

25 (ii) The applicable minimum wage.

26 58. By failing to keep adequate time records required by § 226.2 of the Labor Code,
27 Defendants have injured Plaintiff and the class and made it difficult to calculate rest and
28 recovery and nonproductive time compensation due to Plaintiff and the class.

29 59. As a result of the unlawful acts of Defendants, Plaintiff and the class have been
30 deprived of wages in amounts to be determined at trial, and are entitled to recovery of such
31 amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code §§
32 203, 226, 226.7, 512, 1194, and applicable IWC Wage Orders.

33 60. Under California Labor Code § 558.1, any natural person who is an owner,
34 director, officer, or managing agent of an employer, acting on behalf of the employer, who
35 violates or causes to be violated any provision regulating minimum wages or hours and days of

work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, California Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation. Therefore, Defendants Pedro Arellano-Moya and Jorge Esteban Fuentes are liable for the violations herein alleged.

61. Wherefore, Plaintiff and the class request relief as described herein and below.

THIRD CLAIM FOR RELIEF
FAILURE TO PROVIDE PROPER MEAL PERIODS
OR COMPENSATION IN LIEU THEREOF
CALIFORNIA LABOR CODE §§ 226.7, 512 AND APPLICABLE IWC WAGE ORDER
(AGAINST ALL DEFENDANTS)

62. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

63. Plaintiff and, on information and belief, the Class were not afforded timely meal periods as required by California law, since they were routinely required to work five hours or more without a timely, thirty minute, uninterrupted meal period, and they were not compensated for missed meal periods.

64. California Labor Code §226.7 provides:

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

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

65. The applicable wage order issued by the Industrial Welfare Commission provides with regards to meal periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The

1 written agreement shall state that the employee may, in writing, revoke the
2 agreement at any time.

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

5 66. California Labor Code § 512 contains a similar provision. In this case, there was
6 no mutual waiver of meal periods and employees worked for periods of more than five hours
7 without an off-duty meal period of at least 30 minutes. As noted above, Defendants violated
8 California law by failing to provide timely meal periods mandated by Labor Code § 226.7 and
9 the applicable IWC Wage Order. As such, Defendants are liable for one hour of pay at the
10 employee's regular rate of compensation for each workday that meal periods were not provided.

11 67. As noted above, Defendants violated California law by failing to provide meal
12 periods mandated by Labor Code § 226.7 and the applicable IWC Wage Order, and by failing to
13 provide one hour pay at the employees' regular rate of compensation for each work day that the
14 meal period was not provided.

15 68. Plaintiff and the class did not voluntarily or willfully waive meal periods. Any
16 express or implied waivers obtained from Plaintiff and the class were not willfully obtained or
17 voluntarily agreed to, but rather were a condition of employment or part of an unlawful contract
18 of adhesion.

19 69. By failing to keep adequate time records required by §§ 226 and 1174(d) of the
20 Labor Code, Defendants have injured Plaintiff and the class and made it difficult to calculate the
21 unpaid meal period compensation due to Plaintiff and the class.

22 70. As a result of the unlawful acts of Defendants, Plaintiff and the class have been
23 deprived of wages in amounts to be determined at trial, and are entitled to recovery of such
24 amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code §§
25 203, 226, 226.7, 512, 1194, and applicable IWC Wage Orders.

26 71. Under California Labor Code § 558.1, any natural person who is an owner,
27 director, officer, or managing agent of an employer, acting on behalf of the employer, who
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violates or causes to be violated any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, California Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation. Therefore, Defendants Pedro Arellano-Moya and Jorge Esteban Fuentes are liable for the violations herein alleged.

72. Wherefore, Plaintiff and the class request relief as described herein and below.

FOURTH CLAIM FOR RELIEF
FAILURE TO PAY MINIMUM WAGES
LABOR CODE §§ 1194, 1194.2, 1197(A) & APPLICABLE IWC WAGE ORDER
(AGAINST ALL DEFENDANTS)

73. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

74. California Labor Code § 1197, which is entitled “Pay of Less Than Minimum Wage,” states:

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

75. Defendants have failed to pay minimum wages for all hours worked. In particular, Defendants failed to record and compensate piecework workers for nonproductive time separate from piece-rate units and failed to accurately calculate compensation for rest and recovery periods. Plaintiff and the class are consequently not paid for all hours worked. These practices, among others, have resulted in Defendants not paying the minimum wage for all hours worked. This violation of California minimum wage law was substantial and a main feature of Defendants’ employment practices.

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

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

1 77. As such, Plaintiff and the class may bring this action for minimum wages,
2 interest, costs of suit, and attorney's fees pursuant to California Labor Code § 1194(a).

3 78. As described in California Labor Code § 1194.2, any such action incorporates the
4 applicable wage order of the California Labor Commission.

5 79. California Labor Code § 1194.2 provides:

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

9 80. As described herein, this is an action under California Labor Code § 1194 to
10 recover wages on account of Defendants' failure to pay minimum wages as described in
11 California Labor Code §§ 1197, 1194(a), 1194.2 and the applicable IWC Wage Order. Therefore,
12 Plaintiff and the class are also entitled to recover liquidated damages in an amount equal to the
13 wages unlawfully unpaid and interest thereon.

14 81. Under California Labor Code § 558.1, any natural person who is an owner,
15 director, officer, or managing agent of an employer, acting on behalf of the employer, who
16 violates or causes to be violated any provision regulating minimum wages or hours and days of
17 work in any order of the Industrial Welfare Commission, or violates, or causes to be violated,
18 California Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
19 employer for such violation. Therefore, Defendants Pedro Arellano-Moya and Jorge Esteban
20 Fuentes are liable for the violations herein alleged.

21 82. Wherefore, Plaintiff and the class request relief as described herein and below.

22
23 **FIFTH CLAIM FOR RELIEF**
24 **FAILURE TO PAY PREMIUM OVERTIME WAGES**
LABOR CODE §§510, 1194, 1194.2 & IWC APPLICABLE IWC WAGE ORDER
(AGAINST ALL DEFENDANTS)

25 83. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

26 84. Labor Code § 510(a) establishes the eight (8) hour workday and forty (40) hour
27 workweek, and provides that work in excess of eight (8) hours in one day or forty (40) hours in

one week is to be compensated at one and one-half (1 ½) times the regular rate of pay. An identical provision is found in the applicable IWC Wage Order, which is authorized under California Labor Code § 1185.

85. Labor Code §§ 857-863 phase in overtime provisions under Labor Code § 510(a) to agricultural workers.

86. As described herein, Defendants violated California Labor Code § 510 by employing Plaintiff and the class in excess of eight (8) hours in one day and forty (40) hours in a workweek without paying the required overtime rate. In particular, due to the piece-rate compensation system used by Defendants and without a timekeeping system, Plaintiff and the class were routinely working hours in excess of eight (8) hours per day without receiving overtime compensation.

87. Plaintiff and the class may enforce these provisions pursuant to Labor Code § 1194(a) and Business and Professions Code §§ 17200 *et seq.*

88. California Labor Code § 1194(a) states:

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

89. As a result, Plaintiff and the class are entitled to the unpaid balance of the full amount of the above noted overtime compensation, interest, reasonable attorney's fees, and costs of suit.

90. Under California Labor Code § 558.1, any natural person who is an owner, director, officer, or managing agent of an employer, acting on behalf of the employer, who violates or causes to be violated any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, California Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the

1 employer for such violation. Therefore, Defendants Pedro Arellano-Moya and Jorge Esteban
2 Fuentes are liable for the violations herein alleged.

3 91. Wherefore, Plaintiff and the class request relief as described herein and below.

4
5 **SIXTH CLAIM FOR RELIEF**
6 **WAITING TIME PENALTY**
7 CALIFORNIA LABOR CODE §§ 201, 202, & 203
8 (AGAINST ALL DEFENDANTS)

9 92. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

10 93. California Labor Code §§ 201 and 202 provide for immediate payment of all
11 wages owed at termination of employment.

12 94. As described above, Defendants failed to pay minimum, overtime, meal period
13 wages, and rest and recovery periods and other nonproductive time separate from any piece-rate
14 compensation; and failed to reimburse Plaintiff and the class for necessary expenses incurred in
15 purchasing gloves. Consequently, unpaid wages and monies have accumulated as a result of this
16 practice and Defendants' have failed to liquidate these unpaid wages upon separation from
17 employment, whether through voluntary resignation or involuntary termination, in violation of
18 California law.

19 95. Defendants have violated California Labor Code §§ 201 and/or 202 by failing to
20 pay Plaintiff and a substantial portion of the Class all the wages owed to them, because when
21 Plaintiff and a substantial portion of the Class left their employment with Defendants,
22 Defendants did not pay them the wages owed for rest and recovery periods and other
23 nonproductive time separate from any piece-rate compensation, missed meal periods, or for
24 unreimbursed expenses. This failure to pay wages owed was willful and, as such, Defendants are
25 liable for penalties under § 203 of the Labor Code.

26 96. California Labor Code § 203 provides:

27 If an employer willfully fails to pay, without abatement or reduction, in
28 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
who is discharged or who quits, the wages of the employee shall continue as a
penalty from the due date thereof at the same rate until paid or until an action
thereof is commenced; but the wages shall not continue for more than 30 days.
An employee who secretes or absents himself or herself to avoid payment to him

1 or her, or who refuses to receive the payment when fully tendered to him or her,
2 including any penalty then accrued under this section, is not entitled to any benefit
3 under this section for the time during which he or she so avoids payment. Suit
may be filed for these penalties at any time before the expiration of the statute of
limitations on an action for the wages from which the penalties arise.

4 97. Defendants willfully failed to pay all wages due as the failure to pay was not
5 inadvertent or accidental. As a result, Plaintiff and the class are entitled to 30 days' wages. "30
6 days' wages" is calculated pursuant to California case law as 30 working days and not merely a
7 month's wages.

8 98. In calculating 30 days' wages pursuant to California Labor Code §203, Plaintiff
9 and the class are entitled to compensation for all forms of wages earned (even if not properly
10 paid), including, but not limited to, compensation for unprovided meal periods.

11 99. More than 30 working days have passed since Plaintiff and many members of the
12 Class have left Defendants' employment, and despite this, they have not received payment
13 pursuant to Labor Code § 203. As a consequence of Defendants' willful conduct in not paying all
14 wages, Plaintiff and the class are entitled to 30 days' wages as a penalty under Labor Code §203.

15 100. Under California Labor Code § 558.1, any natural person who is an owner,
16 director, officer, or managing agent of an employer, acting on behalf of the employer, who
17 violates or causes to be violated any provision regulating minimum wages or hours and days of
18 work in any order of the Industrial Welfare Commission, or violates, or causes to be violated,
19 California Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
20 employer for such violation. Therefore, Defendants Pedro Arellano-Moya and Jorge Esteban
21 Fuentes are liable for the violations herein alleged.

22 101. Wherefore, Plaintiff and the class seek the relief as described herein and below.
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SEVENTH CLAIM FOR RELIEF
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
LABOR CODE §§ 226, 226.2 & IWC ORDER
(AGAINST ALL DEFENDANTS)

102. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

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

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece-rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

104. Defendants have failed to provide Plaintiff and, on information and belief, Class Members accurate itemized wage statements that include the gross wages earned, total hours worked, piece-rates if any, rest and recovery period and other nonproductive time separate from any piece-rate compensation, all deductions, net wages earned, pay period dates, name of employee, name address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period, as mandated by Labor Code §226 and applicable IWC Wage Order, because such statements understate wages by failing to include those wages owed for unprovided rest and meal periods and reimbursements of expenses.

1 105. Defendants have, in turn, violated California Labor Code § 226(a) by inaccurately
2 stating gross and net wages and other issues as described above.

3 106. Defendants have also violated California Labor Code § 226.2(a)(2) and (b) by
4 failing to separately state the total hours of compensable rest and recovery periods, the rate of
5 compensation and the gross wages paid for those periods during the pay period, and the total
6 hours of other nonproductive time, the rate of compensation, and the gross wages paid for that
7 time during the pay period.

8 107. By knowingly and intentionally failing to provide Plaintiff and Class Members
9 itemized wage statements in conformance with Labor Code § 226, Defendants have also violated
10 Labor Code § 226.6, which is a misdemeanor punishable by fine and/or prison.

11 108. California Labor Code § 226.6 states:

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

18 109. Defendants have the ability to pay all wages due and have the ability to provide
19 Plaintiff and the class accurate wage statements mandated by Labor Code § 226. But Defendants
20 have willfully refused to pay and accurately state wages, intending to secure instead a discount
21 upon their indebtedness to Plaintiff and the class, and intending to annoy harass, oppress, hinder,
22 delay, or defraud Plaintiff and the class, in violation of California Labor Code § 226.6.

23 110. Defendants' violation of Labor Code § 226 also constitutes a predicate violation
24 of California Business & Profession Code §§17200 *et seq.*

25 111. Under California Labor Code § 558.1, any natural person who is an owner,
26 director, officer, or managing agent of an employer, acting on behalf of the employer, who
27 violates or causes to be violated any provision regulating minimum wages or hours and days of
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work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, California Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation. Therefore, Defendants Pedro Arellano-Moya and Jorge Esteban Fuentes are liable for the violations herein alleged.

112. Wherefore, Plaintiff and the class request relief as described herein and below.

EIGHTH CLAIM FOR RELIEF
VIOLATION OF UNFAIR COMPETITION LAW
CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200 *et seq.*
(AGAINST GROW SMART LABOR, INC. AND FIVE DIAMOND COLD STORAGE, INC.)

113. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

114. On information and belief, and at all times relevant, Plaintiff alleges Defendants, by and through their policies and practices, engaged in unlawful activity prohibited by Business and Professions Code §§ 17200 *et seq.*, including the following:

- a. requiring Class Members, including Plaintiff, to work at least five (5) hours without a timely, thirty (30) minute, uninterrupted meal period, and failing to pay such employees one (1) hour of additional wages at the employees' regular rate of compensation for each workday that the meal period was not provided, in violation of California law and policy;
- b. failure to pay minimum and overtime wages by forcing Plaintiff and the class to work "off-the-clock";
- c. failure to accurately calculate pay rest and recovery period and failure to record and compensate for other nonproductive time separate from any piece-rate compensation;
- d. failure to provide Class Members, including Plaintiff, with accurate itemized wage statements in violation of California law and public policy;
- e. Failure to pay Class Members all wages owed at the time of termination of employment in violation of California law and public policy;

- 1 f. failure to pay to Class Members, including Plaintiff, all minimum and
2 overtime wages owed, including those for meal periods and
3 reimbursements, as detailed above upon separation from employment –
4 whether voluntary or not – in violation of California law and policy;
5 g. failure to create or maintain accurate time-keeping records for Class
6 Members, including Plaintiff, resulting in failure to accurately pay
7 wages owed and provide accurate itemized wage statements, in
8 violation of California law and public policy.

9 115. Defendants' actions as alleged herein constitute false, fraudulent, unlawful,
10 unfair, and deceptive business practices, within the meaning of Business and Professions Code
11 §§ 17200 *et seq.* Plaintiff and, on information and belief, the Class she seeks to represent, have
12 suffered injury in fact and have lost money or property as a result of such unfair competition.

13 116. Plaintiff and the class are entitled to an injunction and other equitable relief
14 against such unlawful practices to prevent future damage, for which there is no adequate remedy
15 at law, and to avoid a multiplicity of lawsuits.

16 117. As a result of their unlawful acts, Defendants have reaped and continue to reap
17 unfair benefits and unlawful profits at the expense of Plaintiff and the class. Defendants should
18 be enjoined from this activity and made to disgorge the ill-gotten gains and restore to Plaintiff
19 and Class Members the wrongfully withheld wages, pursuant to Business and Professions Code
20 § 17203 and the penalties provision of § 17202.

21 118. Plaintiff is informed and believes, and thereon alleges, Defendants have been and
22 continue to be unjustly enriched through false, fraudulent, unlawful, unfair, and deceptive
23 business practices as alleged throughout this Complaint. Plaintiff is further informed and
24 believes, and thereon alleges, Plaintiff and Class Members are prejudiced by Defendants' unfair
25 trade practices.

26 119. As a direct and proximate result of Defendants' unfair business practices,
27 Plaintiff, individually and on behalf of all employees similarly situated, is entitled to equitable
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1 and injunctive relief, including full restitution and/or disgorgement of all wages which have been
2 unlawfully withheld from Plaintiff and the class as a result of the business acts and practices
3 described herein, and enjoinder of Defendants to cease and desist from engaging in the
4 practices described herein.

5 120. As a direct and proximate result of Defendants' unfair business practices, Plaintiff
6 and all Class Members are entitled, in accordance with Business and Professions Code § 17202,
7 to enforcement of penalties resulting from the business acts and practices described herein, and
8 entitled to enjoinder of Defendants to cease and desist from engaging in the practices described
9 herein.

10 121. On information and belief, the unlawful conduct alleged herein is continuing, and
11 there is no indication Defendants will cease such activity. Plaintiff alleges that, if Defendants are
12 not enjoined from the conduct set forth in this Complaint, they will continue their practice of
13 failing provide meal periods or compensation in lieu thereof, and failing to reimburse employees
14 for necessary expenses.

15 122. Wherefore, Plaintiff and the class request relief as described herein and below and
16 as deemed just and proper by this Court.

17
18 **NINTH CLAIM FOR RELIEF**
19 **PENALTIES AND WAGES FOR VIOLATIONS PURSUANT TO LABOR CODE §§ 2698 *et***
***seq.*, 558, AND 558.1**
(PLAINTIFF AGAINST ALL DEFENDANTS)

20 123. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

21 124. Plaintiff brings this representative claim for herself, the State of California and all
22 other current and former employees of Defendants as a non-class claim, as expressly authorized
23 by the statute.

24 125. This PAGA cause of action is brought against Defendants pursuant to provisions
25 of the labor code including § 558, which imposes liability on "persons" (defined by Labor Code
26 § 18 as "... any person, association, organization, partnership, business trust, limited liability
27 company, or corporation.") who violate the Labor Code or IWC regulations or cause these to be
28

1 violated, and which provides for recovery of wages in addition to penalties. Section 558.1 is
2 similar.

3 126. Plaintiff has complied with the PAGA's administrative requirements. Specifically,
4 in the manner prescribed in Labor Code § 2699.3, Plaintiff gave notice to Defendants and the
5 Labor & Workforce Development Agency ("LWDA") of the Labor Code provisions that
6 Defendants are alleged to have violated, as well as the facts and theories surrounding those
7 allegations. Plaintiff did not received notice from the LWDA that it would not investigate the
8 allegations, entitling Plaintiff brings a PAGA cause of action, or the LWDA failed to respond
9 within the time allotted by statute.

10 127. Plaintiff is an aggrieved employee within the meaning of Labor Code § 2699(a).
11 They bring this cause on behalf of themselves, the State of California, and other aggrieved
12 employees – (i.e., current or former employees affected by the Labor Code violations alleged in
13 this Complaint).

14 128. Pursuant to Labor Code § 2699(a), Plaintiff seeks civil penalties as provided
15 under applicable Labor Code sections for violations alleged herein.

16 129. To the extent that any violation of statute or regulation alleged herein does not
17 carry a penalty, Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f), which provides:

18 For all provisions of this code except those for which a civil
19 penalty is specifically provided, there is established a civil penalty
20 for a violation of these provisions, as follows: . . . (2) If, at the time
21 of the alleged violation, the person employs one or more
22 employees, the civil penalty is one hundred dollars (\$100) for each
aggrieved employee per pay period for the initial violation and two
hundred dollars (\$200) for each aggrieved employee per pay
period for each subsequent violation.

23 130. The penalties sought by Plaintiff are to be distributed as mandated in Labor Code
24 § 2699(i) – 75% to the State and the remaining 25% to the aggrieved employees.

25 131. Defendants are liable to Plaintiff, the State, and other current or former employees
26 for the violations alleged in this Complaint. Plaintiff is also entitled to an award of attorneys'
27 fees and costs for bringing this claim as set forth below.

1 132. Plaintiff's PAGA claim does not require Class Certification because both the
2 language of the PAGA and the express intent of the Legislature indicate an aggrieved employee
3 may act in place of the State and bring a representative action on behalf of the State and other
4 employees without having to certify a class. Labor Code § 2699 specifically states an aggrieved
5 employee may bring an action on behalf of other employees, "[n]otwithstanding any other
6 provision of law..." The wording of the PAGA, which authorizes an aggrieved employee to
7 bring an action "on behalf of himself or herself and other current or former employees... [,]" is
8 similar to the former wording of Business and Professions Code § 17204, which authorized a
9 person or organization to act "for the interests of itself, its members or the general public"
10 The Legislature has made clear an action under the PAGA is in the nature of an enforcement
11 action, with the aggrieved employee acting as Private Attorney General to collect penalties from
12 employers and persons who violate labor laws. Such an action is fundamentally a law
13 enforcement action designed to protect the public and penalize the defendant for past illegal
14 conduct. Restitution is not the primary object of a PAGA action, as its purpose is not recovering
15 damages, but civil penalties. And the PAGA does not preclude an employee from pursuing any
16 other claim she may have available under law.

17 133. As such, Plaintiff individually holds a substantive right to stand in the shoes of the
18 State of California and bring this PAGA claim for the State and other current or former
19 employees.

20 134. Under California Labor Code § 558.1, any natural person who is an owner,
21 director, officer, or managing agent of an employer, acting on behalf of the employer, who
22 violates or causes to be violated any provision regulating minimum wages or hours and days of
23 work in any order of the Industrial Welfare Commission, or violates, or causes to be violated,
24 California Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
25 employer for such violation. Therefore, Defendants Pedro Arellano-Moya and Jorge Esteban
26 Fuentes are liable for the violations herein alleged.

1 135. Wherefore, Plaintiff requests penalties pursuant to the PAGA as described herein
2 and any other relief this Court deems proper.

3
4 **PRAYER FOR RELIEF**

5 136. Wherefore, Plaintiff prays for judgment for Plaintiff and the class as follows:

- 6 a. That the Court determine this action may be maintained as a
7 class action or actions;
- 8 b. For compensatory damages including wages in an amount
9 according to proof with interest thereon;
- 10 c. For economic and/or special damages in an amount according
11 to proof with interest thereon;
- 12 d. For a declaratory judgment that each of the Defendants
13 violated Plaintiff's and Class Members' rights under AWP, A
14 29 U.S.C. § 1801 *et seq.*, the California Labor Code, and
15 applicable IWC Wage Orders as set forth in the preceding
16 paragraphs;
- 17 e. Award Plaintiff and proposed Class Members statutory
18 damages or, in the alternative, actual damages for Defendants'
19 violations of AWP;
- 20 f. That each of the Defendants be found to have engaged in unfair
21 competition in violation of California Business and Professions
22 Code § 17200 *et seq.*;
- 23 g. That each of the Defendants be ordered and enjoined to make
24 restitution to the Class due to their unfair competition,
25 including disgorgement of their wrongfully-obtained revenues,
26 earnings, profits, compensation, and benefits, pursuant to
27 California Business and Professions Code §§ 17203 and 17204;
- 28

- h. That each of the Defendants be enjoined from continuing the unlawful or unfair competition in violation of § 17200 as alleged herein;
- i. For declaratory relief for Defendants' violation of the California Labor Code, California Business and Professions Code, and the Federal AWPA;
- j. That Defendants be enjoined from further acts of restraint of trade or unfair competition;
- k. For premium wages pursuant to Labor Code §§ 226, 226.7, and 510;
- l. For unpaid wages pursuant to California Labor Code § 1194 and liquidated damages pursuant to Labor Code § 1194.2;
- m. For an order imposing all statutory and/or civil penalties provided by law, including but not limited to, penalties under Labor Code §§ 203, 210, 225.5, 226, 226.3, 226.7, 256, 512, 558, 1174.5, 1194, 1194.2, 1197.1, 2802, 2699(a) and 2699(f) relating to all facts alleged in the complaint;
- n. An award to Plaintiff and the Class Members of reasonable attorneys' fees, costs, and interest thereon pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 218.5, 218.6, 226, 1194, 2699(g), and/or other applicable law; and
- o. For the greater of actual or statutory damages of \$500 for each Plaintiff and Class Member pursuant to AWPA;
- p. For costs of suit and attorneys' fees pursuant to AWPA, the California Labor Code, the California Unfair Competition Law, and PAGA;

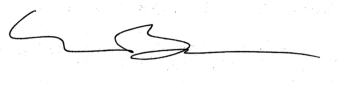
- q. For actual, incidental, and consequential damages for breach of contract;
- r. Injunctive relief;
- s. Interest pursuant to California Labor Code § 218.6;
- t. For such other and further relief as the court deems just and proper pursuant to the procedures detailed in labor code §§ 2698 *et seq.*;
- u. For all provisions of the labor code violated as described above except those for which a civil penalty is specifically provided, a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- v. For all provisions of the labor code violated as described above for which a civil penalty is specifically provided, civil penalties for each aggrieved employee as specifically provided by statute.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims and those of the Class by jury to the extent authorized by law.

Dated: January 04, 2024

MALLISON & MARTINEZ

By: 

Stan Mallison
Hector Martinez
Cody Bolce

Attorneys for Plaintiff and a Class of
Similarly Situated Employees