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individually and on behalf of others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MERCED

ERIKA ALVAREZ, individually and on
behalf of all others similarly situated,

PLAINTIFF,

v.

QUAIL H FARMS, LLC, a California limited
liability company; JACK E. SMITH, an
individual; JAMES M. HENNIGAN, an
individual; and DOES 1 through 50, inclusive,

DEFENDANTS.

CASE NO.: 23CV-04398

*Assigned for all purposes to the Honorable
Judge Mark V. Bacciarini, Courtroom 8*

**SECOND AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT**

- 1) FAILURE TO AUTHORIZE AND PERMIT
REST BREAKS AND/OR PAY REST
BREAK PREMIUMS (LABOR CODE §
226.7)**
- 2) FAILURE TO PROVIDE MEAL PERIODS
AND/OR PAY MEAL PERIOD PREMIUMS
(LABOR CODE § 226.7, 512)**
- 3) FAILURE TO TIMELY PAY FINAL
WAGES (LABOR CODE §§ 201-203)**
- 4) FAILURE TO PROVIDE COMPLETE AND
ACCURATE WAGE STATEMENTS
(LABOR CODE § 226)**
- 5) VIOLATION OF CAL. WARN ACT
(LABOR CODE §§ 1400-1408)**
- 6) UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204)**
- 7) PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE §§ 2698 – 2699.5)**
- 9) FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§ 1194,
1194.2 , 1197)**
- 10) FAILURE TO PAY ALL OVERTIME
WAGES OWED (LABOR CODE §§ 204,
510, 558, 1194, 1198)**

DEMAND FOR JURY TRIAL

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9 individually and on behalf of others similarly situated
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1 Plaintiff ERIKA ALVAREZ (“Plaintiff”), individually, and on behalf of others similarly situated
2 (hereinafter “Class Members”), and as a private attorney general, based upon facts that either have
3 evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further
4 investigation and discovery, complains and hereby alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. Plaintiff brings this action against Defendants QUAIL H FARMS, LLC, a California
7 limited liability company; JACK E. SMITH, an individual;; and DOES 1 through 50, inclusive
8 (hereinafter collectively referred to as “Defendants”) for California Labor Code violations, unfair
9 business practices, and monetary penalties stemming from Defendants’ failure to provide compliant
10 meal periods, failure to authorize and permit compliant rest periods, failure to pay premium wages for
11 noncompliant meal periods and rest periods, failure to timely pay final wages, failure to provide accurate
12 and complete itemized wage statements, failure to provide advance notice in connection with mass
13 layoffs and termination of business operations in accordance with Cal/WARN Act notice requirements,
14 failure to pay minimum wages, and failure to pay overtime wages.

15 2. Plaintiff’s First through Sixth Causes of Action, and Eighth and Ninth Causes of Action,
16 are brought as a class action on behalf of herself and similarly situated current and former employees of
17 Defendants (hereinafter collectively referred to as the “Class” or “Class Members,” as defined more
18 fully in paragraph 19, below) pursuant to California Code of Civil Procedure section 382. The monetary
19 damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
20 and will be established according to proof at trial.

21 3. Plaintiff’s Seventh Cause of Action is brought as a representative action on behalf of
22 herself and other current and former non-exempt employees of Defendants in the State of California at
23 any time within the period beginning one (1) year prior to the date of Plaintiff’s PAGA letter to the
24 LWDA and ending at the time this action settles or proceeds to final judgment (hereinafter collectively
25 referred to as “Aggrieved Employees”) pursuant to California Labor Code sections 2698, *et seq.* Plaintiff
26 is an aggrieved employee against whom one or more of the alleged violations occurred. The civil
27 penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be
28 established according to proof at trial.

4. The Court has jurisdiction over this action pursuant to the California Constitution, Article

1 VI, section 10, which grants the superior court “original jurisdiction in all other causes” except those
2 given by statute to other courts. The statutes under which this action is brought do not specify any other
3 basis for jurisdiction.

4 5. This Court has jurisdiction over Defendants because, upon information and belief,
5 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise
6 intentionally avail themselves of the California market so as to render the exercise of jurisdiction over
7 them by the California courts consistent with traditional notions of fair play and substantial justice.

8 6. Venue is proper in this Court because, upon information and belief, Defendants maintain
9 offices, have agents, and/or transact business in the State of California, County of Merced.

10 **PARTIES**

11 7. Plaintiff is a resident of the State of California. At all times relevant to this action,
12 Plaintiff was employed by Defendants in the County of Merced, State of California as an hourly, non-
13 exempt employee.

14 8. Defendant QUAIL H FARMS LLC is, and at all times herein mentioned was, a limited
15 liability company organized and existing under the laws of the State of California, and registered to do
16 business in the State of California. Plaintiff is informed and believes that QUAIL H FARMS LLC is a
17 grower, packer, and shipper of sweet potatoes and yams.

18 9. Plaintiff is informed and believes, and thereon alleges, that defendant JACK E. SMITH,
19 an individual, is a resident of the State of California. Plaintiff is informed and believes, and thereon
20 alleges, that defendant JACK E. SMITH is an owner, director, officer, or managing agent of QUAIL H
21 FARMS LLC. Plaintiff is informed and believes, and thereon alleges, that defendant JACK E. SMITH
22 is also known as Jackie E. Smith.

23 10. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and
24 therefore sues these defendants by such fictitious names. The Doe defendants may be individuals,
25 partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that, at all times
26 mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant, employee, co-
27 venturer, and/or co-conspirator of each of the other defendants, and was at all times mentioned acting
28 within the scope, purpose, consent, knowledge, ratification and authorization of such agency,
employment, joint venture and conspiracy. Plaintiff will amend this Complaint to allege their true names

1 and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the
2 fictitiously named Doe defendants is responsible in some manner for the occurrences herein alleged,
3 and that Plaintiff's damages as herein alleged were proximately caused by its conduct. Defendants
4 QUAIL H FARMS LLC; JACK E. SMITH;; and DOES 1 thorough 50, inclusive, are collectively
5 referred to herein as "Defendants."

6 11. Defendants are and at all times herein mentioned were, (a) conducting business in the
7 County of Merced, State of California, and (b) the employer of Plaintiff consistent with the California
8 Labor Code and Industrial Welfare Commission Wage Orders ("Wage Orders").

9 12. Plaintiff further alleges that Defendants, directly or indirectly controlled or affected the
10 working conditions, wages, working hours, and conditions of employment of Plaintiff, the Class, and
11 the Aggrieved Employees so as to make each of said Defendants employers and employers jointly liable
12 under the statutory provisions set forth herein.

13 13. Plaintiff is informed and believes, and thereon alleges, that at all times relevant to this
14 action, Defendants were the alter egos, predecessors, divisions, affiliates, integrated enterprises, joint
15 employers, subsidiaries, successors, parents, principals, related entities, co-conspirators, authorized
16 agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each defendant
17 was dominated by his, her, or its codefendants, and each was the alter ego of the other.

18 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all
19 respects pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
20 plan, or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to
21 the other defendants.

22 15. Plaintiff is informed and believes, and based thereon alleges, that in perpetrating the acts
23 and omissions alleged herein, Defendants, and each of them, acted pursuant to, and in furtherance of,
24 their policies and practices of not paying Plaintiff, the Class, and the Aggrieved Employees all wages
25 earned and due, through methods and schemes which include, but are not limited to: failing to pay all
26 minimum wages owed, failing to pay all overtime wages owed, failing to provide meal periods; failing
27 to authorize and permit rest breaks; failing to pay premium wages in lieu of missed and/or noncompliant
28 meal periods and rest breaks; failing to properly maintain records; failing to provide accurate itemized
statements for each pay period; failing to timely pay wages during employment; and failing to timely

1 pay final wages, in violation of the California Labor Code (“Labor Code”) and applicable Industrial
2 Welfare Commission (“IWC”) Wage Order(s).

3 16. Plaintiff is informed and believes, and based thereon alleges, that in accordance with
4 Labor Code section 558.1, Defendants, and any person acting on behalf of Defendants, are liable for
5 violating, or causing to violate, any provision regulating minimum wages or hours and days of work in
6 any order of the Industrial Welfare Commission, or Labor Code sections 203, 226, or 226.7.

7 **CLASS ACTION ALLEGATIONS**

8 17. Plaintiff brings the First through Sixth, and Eighth and Ninth Causes of Action as a class
9 action on her own behalf and on behalf of all other members of the general public similarly situated,
10 and, thus, seeks class certification under Code of Civil Procedure section 382.

11 18. The proposed class is defined as follows: All current and former non-exempt employees
12 of any of the Defendants within the State of California at any time commencing four (4) years preceding
13 the filing of Plaintiff’s original complaint up until the time that notice of the certified class action is
14 provided to the class (hereinafter referred to as the “Class” or “Class Members”).

15 19. The members of the Class who were terminated from employment pursuant to mass
16 layoffs or termination (as those terms are defined in California Labor Code section 1400.5) constitute
17 the “WARN Act Subclass.”

18 20. Plaintiff reserves the right to establish other subclasses as appropriate.

19 21. The Class is ascertainable and there is a well-defined community of interest in the
20 litigation:

21 a. Numerosity: The Class Members are so numerous that joinder of all Class Members
22 is impracticable. The membership of the entire Class is unknown to Plaintiff at this
23 time; however, the Class is estimated to be over seventy-five (75) individuals and the
24 identity of such membership is readily ascertainable by inspection of Defendants’
25 employment records.

26 b. Typicality: Plaintiff’s claims are typical of all other Class Members demonstrated herein.
27 Plaintiff and the Class members worked as hourly, non-exempt employees for
28 Defendants in California at Defendants’ locations in California. Plaintiff will fairly and
adequately protect the interests of the other Class Members with whom she has a well-

defined community of interest. Plaintiff and the other similarly situated Class Members were employed by Defendants and shared similar job duties and responsibilities, were subjected to the same policies and practices, and endured similar violations at the hands of Defendants.

- c. Adequacy: Plaintiff will fairly and adequately protect the interests of each Class Member, with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other Class Members. Plaintiff's counsel, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member. Other former and current employees of Defendants may also serve as representatives of the Class and Subclass, if needed.
- d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all Class Members is impractical.
- e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the Class Members who are not named in the complaint anonymity that allows for the vindication of their rights.

22. There are common questions of law and fact as to the Class that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the Class:

- a. Whether Defendants deprived Plaintiff and the other Class Members of meal periods and/or rest breaks or required Plaintiff and the other Class Members to work during meal periods and/or rest breaks without compensation;
- b. Whether Defendants failed to pay meal period premium wages to Class Members when they were not provided legally compliant meal periods;

- c. Whether Defendants failed to pay rest period premium wages to Class Members when they were not authorized and permitted to take legally compliant rest periods;
- d. Whether Defendants had a corporate policy and practice of failing to provide legally compliant meal periods;
- e. Whether Defendants had a corporate policy and practice of failing to authorize and permit legally compliant rest breaks;
- f. Whether Defendants failed to pay all wages due to Plaintiff and the other Class Members within the time required upon their discharge or resignation from employment;
- g. Whether Defendants failed to pay all wages due to Plaintiff and the other Class Members within the time required during their employment;
- h. Whether Defendants' failure to pay wages, without abatement, or reduction, in accordance with the California Labor Code was willful;
- i. Whether Defendants complied with wage statement reporting as required by the California Labor Code, including section 226;
- j. Whether Defendants maintained accurate payroll and time records;
- k. Whether Defendants were employers under the Cal/WARN Act;
- l. Whether the Class and/or WARN Act Subclass are protected under the Cal/WARN Act;
- m. Whether layoffs and terminations by Defendants commencing in November 2023 triggered the requirements of the Cal/WARN Act;
- n. Whether Defendants gave at least 60 days advance written notice to affected employees before terminating their employment;
- o. Whether Defendants failed to pay wages and benefits for 60 days in lieu of notice;
- p. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.* based on their improper withholding of compensation and deduction of wages;
- q. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law;
- r. Whether Plaintiff and the other Class Members are entitled to compensatory damages pursuant to the California Labor Code;

- 1 s. Whether Defendants' timekeeping policies and/or practices resulted in the failure to
2 properly compensate Plaintiff and the other Class Members for all hours actually worked;
3 and
4 t. Whether Defendants violated the applicable Labor Code provisions including, but not
5 limited to §§ 510 and 1194 by requiring overtime work and not paying for said work to
6 Plaintiff and the other Class Members according to the overtime laws of the State of
7 California.

8 **GENERAL ALLEGATIONS**

9 23. Plaintiff is informed and believes that Defendants are growers, packers, and shippers of
10 sweet potatoes and yams. Defendants employed Plaintiff as a laborer at Defendants' facility located in
11 Livingston, California from approximately November 2022 until her abrupt termination on or about
12 November 11, 2023. Plaintiff, among other things, worked the production line and operated machinery.

13 24. At all relevant times set forth herein, Defendants employed Plaintiff, the Class, and the
14 Aggrieved Employees as hourly-paid or non-exempt employees.

15 25. Throughout the time period involved in this case, Defendants had the authority to hire
16 and terminate Plaintiff, the Class, and the Aggrieved Employees; to directly or indirectly control work
17 rules, working conditions, wages, working hours; and to directly or indirectly control the terms of
18 employment of Plaintiff, the Class, and the Aggrieved Employees.

19 26. At all times herein mentioned, Defendants were subject to the Labor Code of the State of
20 California and the applicable Industrial Welfare Commission Orders.

21 27. On or about November 10, 2023, Defendants held an employee meeting and announced
22 that the company was ceasing its operations and would no longer be in business. Following the
23 unexpected announcement, Plaintiff and other employees were abruptly terminated, effective
24 immediately, without warning or advance notice. On information and belief, Defendants terminated
25 their entire workforce without advance notice.

26 28. Defendants' termination notice to Plaintiff states that her termination was effective
27 November 12, 2023 and that the "Business Closed." Although Defendants terminated Plaintiff effective
28 November 12, 2023, Defendants did not issue Plaintiff her final paycheck until November 17, 2023.

29. As of the filing of this action, Plaintiff remains unemployed.

1 30. On information and belief, Defendants employed, or have employed within the preceding
2 12 months, 75 or more employees in California. According to publicly released data, Defendants
3 received at least two Paycheck Protection Program (“PPP”) loans totaling over \$1.5 million for
4 approximately 95 jobs.¹

5 31. On information and belief, Defendants did not notify affected employees, the State of
6 California Economic Development Department, the local Workforce Investment Board, or the chief
7 elected official of each city or county in California in which the closure of any of Defendants’ California
8 locations occurred, at least 60 days in advance of those closures. As a result of Defendants’ failure to
9 give notice, affected employees were deprived of any transition time to adjust to the prospective loss of
10 employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining
11 that will allow these workers to successfully compete in the job market.

12 32. Plaintiff is informed and believes, and thereon alleges, that Defendants engaged in an
13 ongoing and systematic scheme of wage and hour violations against their hourly-paid or non-exempt
14 employees. As set forth in more detail below, Defendants routinely failed to permit Plaintiff, the Class,
15 and the Aggrieved Employees to take timely and duty-free meal periods and rest breaks in violation of
16 California law, and failed to pay associated meal period and rest break premium wages. Defendants also
17 failed to provide accurate itemized wage statements for each pay period, failed to timely pay all wages
18 owed during and upon separation of employment, failed to pay minimum wages, and failed to pay all
19 overtime wages

20 33. On information and belief, throughout the time period involved in this case, Defendants
21 have implemented policies and practices which prohibited Plaintiff, the Class, and the Aggrieved
22 Employees from taking timely and duty-free rest periods. Defendants regularly failed to provide,
23 authorize, and permit Plaintiff, the Class, and the Aggrieved Employees to take full, uninterrupted, off-
24 duty rest periods for every shift lasting three and one-half (3.5) to six (6) hours and/or two full,
25 uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours, and failed to make a
26 good faith effort to authorize, permit, and provide such rest breaks in the middle of each work period.

27 34. On information and belief, throughout the time period involved in this case, Defendants
28

¹ <https://www.federalpay.org/paycheck-protection-program/quail-h-farms-llc-livingston-ca>

1 did not adequately inform Plaintiff, the Class, and the Aggrieved Employees of their right to take rest
2 periods under California law. Moreover, to the extent Defendants implemented any written policies,
3 Defendants systematically disregarded their own written policies regarding the provision and timing of
4 rest periods for Plaintiff, the Class, and the Aggrieved Employees. Instead, Defendants' actual policy
5 and practice was to schedule Plaintiff, the Class, and the Aggrieved Employees in a way that regularly
6 prohibited them from taking timely and duty-free rest periods, and to regularly require Plaintiff, the
7 Class, and the Aggrieved Employees to work through their rest periods.

8 35. On information and belief, throughout the time period involved in this case, Defendants
9 failed to pay Plaintiff, the Class, and the Aggrieved Employees premium wages for rest periods that
10 were missed, late, interrupted, or shortened in violation of California law. Defendants knew or should
11 have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all rest
12 periods or payment of one additional hour of pay at their regular rate of pay when a rest period was
13 missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to
14 authorize and permit Plaintiff, the Class, and the Aggrieved Employees to take duty-free rest periods,
15 and failed to pay one additional hour of pay to Plaintiff, the Class, and the Aggrieved Employees at their
16 regular rate of pay when a rest period was missed, short, late and/or interrupted.

17 36. On information and belief, throughout the time period involved in this case, Defendants
18 implemented policies and practices which failed to provide Plaintiff, the Class, and the Aggrieved
19 Employees with all timely and duty-free meal periods. On information and belief, Defendants routinely
20 failed to relieve Plaintiff, the Class, and the Aggrieved Employees of all duties during their meal periods,
21 regularly failed to relinquish control over Plaintiff, the Class, and the Aggrieved Employees during their
22 meal periods, regularly failed to permit Plaintiff, the Class, and the Aggrieved Employees a reasonable
23 opportunity to take their meal periods, and regularly impeded or discouraged Plaintiff, the Class, and
24 the Aggrieved Employees from taking thirty (30) minute uninterrupted meal breaks no later than the end
25 of their fifth hour of work and/or from taking a second thirty (30) minute uninterrupted meal break no
26 later than their tenth hour of work for shifts lasting more than ten (10) hours.

27 37. On information and belief, throughout the time period involved in this case, Defendants
28 did not adequately inform Plaintiff, the Class, and the Aggrieved Employees of their right to take meal
periods under California law. Moreover, to the extent Defendants implemented any written policies,

Defendants systematically disregarded their own written policies regarding the provision and timing of meal periods for Plaintiff, the Class, and the Aggrieved Employees.

38. On information and belief, throughout the time period involved in this case, Defendants failed to pay Plaintiff, the Class, and the Aggrieved Employees premium wages for meal periods that were missed, late, interrupted, or shortened in violation of California law. Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all meal periods or payment of one additional hour of pay at their regular rate of pay when a meal period was missed, short, late, and/or interrupted. Notwithstanding this knowledge, on information and belief, Defendants routinely failed to provide legally compliant meal periods to Plaintiff, the Class, and the Aggrieved Employees, and routinely failed to pay one additional hour of pay to Plaintiff, the Class, and the Aggrieved Employees at their regular rate of pay when a meal period was missed, short, late, and/or interrupted.

39. On information and belief, throughout the time period involved in this case, Defendants regularly failed to pay Plaintiff, the Class, and the Aggrieved Employees all wages owed to them upon discharge or resignation. Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all wages owed to them upon termination within the time permissible under California Labor Code section 202. Plaintiff, the Class, and the Aggrieved Employees did not receive payment of all final wages owed to them upon discharge or resignation, including premium wages, within any time permissible under California Labor Code section 202.

40. On information and belief, throughout the time period involved in this case, Defendants regularly failed to pay Plaintiff, the Class, and the Aggrieved Employees all wages within any time permissible under California law, including, *inter alia*, California Labor Code section 204. Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all wages owed to them during their employment. Plaintiff, the Class, and the Aggrieved Employees did not receive payment of all wages, including meal and rest period premiums.

41. On information and belief, throughout the time period involved in this case, Defendants regularly failed to provide complete or accurate wage statements to Plaintiff, the Class, and the Aggrieved Employees. Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance

1 with California law, but, in fact, they did not receive complete and accurate wage statements from
2 Defendants. The deficiencies included, *inter alia*, the failure to include premium pay for noncompliant
3 meal periods and rest breaks.

4 42. On information and belief, throughout the time period involved in this case, Defendants
5 would keep track of Plaintiff's, the Class, and the Aggrieved Employees' time worked and would
6 unlawfully shave their work time and/or round their work time such that they would not be fully paid
7 for all time worked. This time-shaving and/or rounding practice utilized by Defendants was not even-
8 handed over time and would almost exclusively round and shave in Defendants' favor such that Plaintiff,
9 the Class, and the Aggrieved Employees were routinely unpaid for their time worked. Additionally,
10 Defendants required Plaintiff, the Class, and the Aggrieved Employees to wait in line at the timeclock
11 in order to clock in at the start of their shifts, directed employees to arrive at work at least 10 minutes
12 prior to the start of their scheduled start time, and/or perform pre-shift job duties off-the-clock, including
13 but not limited, turning on the machines and waiting for them to warm up, cleaning machines, changing
14 out the water on machines. Despite being under Defendants' direction and control Defendants would
15 not compensate Plaintiff, the Class, and the Aggrieved Employees for this time. As a result, Defendants
16 failed to pay Plaintiff, the Class, and the Aggrieved Employees all required minimum and overtime
17 wages.

18 43. Throughout the time period involved in this case, Defendants knew or should have known
19 that they had a duty to compensate Plaintiff, the Class, and the Aggrieved Employees pursuant to
20 California law. Defendants had the financial ability to pay such compensation, but willfully, knowingly,
21 and intentionally failed to do so, and falsely represented to Plaintiff, the Class, and the Aggrieved
22 Employees that they paid all wages owed to them, all in order to increase Defendants' profits.

23 44. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall
24 limit the right of any wage claimant to "sue directly ... for any wages or penalty due to him [or her]
25 under this article."

26 **FIRST CAUSE OF ACTION**

27 **(Violation of California Labor Code § 226.7)**

28 **(Against All Defendants)**

45. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every

1 allegation set forth above.

2 46. At all times herein set forth, the applicable IWC Wage Order and California Labor Code
3 section 226.7 were applicable to Plaintiff and the other Class Members' employment by Defendants.

4 47. At all relevant times, California Labor Code section 226.7 provides that no employer
5 shall require an employee to work during any rest period mandated by an applicable order of the
6 California IWC.

7 48. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
8 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
9 middle of each work period" and that the "rest period time shall be based on the total hours worked daily
10 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof unless the total
11 daily work time is less than three and one-half (3.5) hours."

12 49. During the relevant time period, Defendants required Plaintiff and other Class Members
13 to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each
14 four (4) hour period worked.

15 50. During the relevant time period, Defendants willfully required Plaintiff and the other
16 Class Members to work during rest periods, failed to allow Plaintiff and the other Class Member to take
17 any rest period and/or failed to authorize and permit Plaintiff and the other Class Members to take
18 uninterrupted, duty-free rest breaks.

19 51. During the relevant time period, Defendants failed to pay Plaintiff and the other Class
20 Members the full rest period premium due pursuant to California Labor Code section 226.7 for work
21 performed during rest periods, and/or for failure to authorize and permit Plaintiff and other Class
22 Members from taking uninterrupted rest periods.

23 52. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code
24 section 226.7.

25 53. Pursuant to the applicable IWC Wage Orders and California Labor Code section
26 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional
27 hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period
28 was not provided.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 512, 226.7)

(Against All Defendants)

54. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

55. At all relevant times, the relevant IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff and the other Class Members' employment by Defendants.

56. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

57. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

58. At all relevant times, California Labor Code section 512(a) further provides that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

59. During the relevant time period, Plaintiff and the other Class Members who were scheduled to work for a period of time longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

60. During the relevant time period, Defendants failed to pay Plaintiff and the other Class Members the full meal period premiums due pursuant to California Labor Code section 226.7.

61. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

62. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b),

1 Plaintiff and the other Class Members are entitled to recover from Defendants one additional hour of
2 pay at the employee's regular rate of compensation for each work day that the meal period was not
3 provided.

4 **THIRD CAUSE OF ACTION**

5 **(Violation of California Labor Code §§ 201, 202, 203)**

6 **(Against All Defendants)**

7 63. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
8 allegation set forth above.

9 64. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide
10 that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are
11 due and payable immediately, and if an employee quits his or her employment, his or her wages shall
12 become due and payable not later seventy-two (72) hours thereafter, unless the employee has given
13 seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to
14 his or her wages at the time of quitting.

15 65. During the relevant time period, the employment of Plaintiff and many other Class
16 Members with Defendants ended, *i.e.* was terminated by quitting or discharge. Defendants intentionally
17 and willfully failed to pay Plaintiff and other Class Members who are no longer employed by Defendants
18 all of their wages, earned and unpaid, including but not limited to premium wages, within seventy-two
19 (72) hours of their leaving Defendants' employ.

20 66. Defendants' failure to pay Plaintiff and other Class Members who are no longer
21 employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving
22 Defendants' employ, is in violation of California Labor Code sections 201 and 202.

23 67. California Labor Code section 203 provides that if an employer willfully fails to pay
24 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue
25 as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but
26 the wages shall not continue for more than thirty (30) days.

27 68. Plaintiff and other Class Members who are no longer employed by Defendants are
28 entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to
a thirty (30) day maximum pursuant to California Labor Code section 203.

1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226(a))**

3 **(Against All Defendants)**

4 69. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
5 allegation set forth above.

6 70. At all material times set forth herein, California Labor Code section 226(a) provides that
7 every employer shall furnish each of its employees an accurate itemized statement in writing showing
8 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
9 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
10 provided that all deductions made on written orders of the employee may be aggregated and shown as
11 one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
12 the name of the employee and his or her social security number, (8) the name and address of the legal
13 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate by the employee. The deductions made from
15 payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month,
16 day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the
17 employer for at least three years at the place of employment or at a central location within the State of
18 California.

19 71. Defendants have intentionally and willfully failed to provide Plaintiff and the Class with
20 complete and accurate wage statements. The deficiencies include, but are not limited to the failure list
21 the total number of hours worked, premium wages, and the correct rates of pay.

22 72. Because of Defendants' violation of California Labor Code section 226(a), Plaintiff and
23 the Class have suffered injury and damage to their statutorily-protected rights.

24 73. More specifically, Plaintiff and the Class have been injured by Defendants' intentional
25 and willful violation of California Labor Code section 226(a) because they were denied both their legal
26 right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant
27 to California Labor Code section 226(a).

28 74. Plaintiff and the Class are entitled to recover from Defendants the greater of their actual
damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an

1 aggregate penalty not exceeding four thousand dollars per employee.

2 75. Plaintiff and the Class are also entitled to injunctive relief to ensure compliance with this
3 section, pursuant to California Labor Code section 226(g).

4 **FIFTH CAUSE OF ACTION**

5 **(Violation of Cal. WARN Act – Labor Code §§ 1400, et seq.)**

6 **(Against All Defendants)**

7 76. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
8 allegation set forth above.

9 77. At all relevant times, Plaintiff and the Class were “employees” of Defendants within the
10 meaning of California Labor Code section 1400(h).

11 78. At all relevant times, Defendants were “employers” within the meaning of Labor Code
12 section 1400(b) and/or joint employers or successors liable for the violations.

13 79. Defendants owned or operated covered establishments at Defendant in California.

14 80. On information and belief, Defendants employed 75 or more people at each facility, who
15 were not seasonal employees.

16 81. On information and belief, Plaintiff and the WARN Act Subclass were subjected to a
17 “mass layoff” by Defendants within the meaning of California Labor Code sections 1400(c) and (d) in
18 that each was subjected to a separation from employment for lack of funds or lack of work, and
19 Defendants laid off 50 or more employees during a 30-day period at its covered establishments.

20 82. On information and belief, Plaintiff and the WARN Act Subclass were subjected to a
21 “Termination” by Defendants when Defendants ceased operations at its covered establishments,

22 83. Defendants did not provide Plaintiff and the Class written notice of the “mass layoff” or
23 “termination” 60 days in advance of the “mass layoff” or “termination.”

24 84. Defendants’ actions constituted a “mass layoff” or “termination” without written notice
25 to the Plaintiff and the WARN Act Subclass 60 days in advance, thereby depriving Plaintiff and the
26 WARN Act Subclass of the notice required by the California WARN Act.

27 85. Defendants are liable to Plaintiff and the WARN Act Subclass for: (1) back pay either at
28 the average regular rate of compensation received by them during the last three years of their
employment, or at their final rate of pay, whichever is higher; and (2) the value of the cost of any benefits

1 to which they would have been entitled had their employment continued. Cal. Labor Code § 1402.
2 Defendants are liable to Plaintiff and WARN Act Subclass for up to 60 days, and interest thereon.

3 86. Defendants did not notify affected employees, the State of California, Employment
4 Development Department or the chief elected officials of any affected city or county government in
5 advance of the “mass layoff” or “termination.” Pursuant to California Labor Code section 1403, Plaintiff
6 and the WARN Act Subclass are entitled to recover a civil penalty of five hundred dollars (\$500) for
7 each day of Defendants’ violation of the Cal WARN Act.

8 87. Plaintiff and the WARN Act Subclass are also entitled to recover attorneys’ fees and
9 costs pursuant to California Labor Code § 1404.

10 **SIXTH CAUSE OF ACTION**

11 **(Violation of Cal. Business & Professions Code §§ 17200, et seq.)**

12 **(Against All Defendants)**

13 88. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
14 allegation set forth above.

15 89. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful
16 and harmful to Plaintiff and the Class, to the general public, and Defendants’ competitors. Accordingly,
17 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of
18 Civil Procedure section 1021.5.

19 90. Defendants’ activities as alleged herein are violations of California law, and constitute
20 unlawful business acts and practices in violation of California Business & Professions Code section
21 17200, *et seq.*

22 91. Plaintiff is a “person” within the meaning of Business & Professions Code section 17204,
23 has suffered injury, and therefore has standing to bring this cause of action for injunctive relief,
24 restitution, and other appropriate equitable relief.

25 92. A violation of California Business & Professions Code section 17200, *et seq.* may be
26 predicated on the violation of any state or federal law. In this instant case, Defendants’ policies and
27 practices of requiring employees, including Plaintiff and the Class, work without legally compliant meal
28 periods and rest breaks and without premium compensation in lieu thereof, violate California Labor
Code sections 226.7 and 512(a). Moreover, Defendants’ policies and practices of failing to timely pay

1 wages to Plaintiff and the Class violate California Labor Code sections 201, 202, and 203.

2 93. Defendants also violated California Labor Code sections 204, 226(a), 2800, and 2802.

3 94. Wage-and-hour laws express fundamental public policies. Paying employees their wages
4 at the correct rate of pay, providing them with meal periods and rest breaks, etc., are fundamental public
5 policies of California. Labor Code section 90.5(a) sets forth the public policies of this State vigorously
6 to enforce minimum labor standards, to ensure that employees are not required or permitted to work
7 under unlawful conditions, and to protect law-abiding employers and their employees from competitors
8 who lower costs to themselves by failing to comply with fair labor standards. Through the conduct
9 alleged in this Complaint Defendants have acted contrary to these public policies, have violated specific
10 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
11 violation of Business & Professions Code § 17200 et seq.

12 95. As a result of the herein described violations of California law, Defendants unlawfully
13 gained an unfair advantage over other businesses.

14 96. Plaintiff and the Class have been personally injured by Defendants' unlawful business
15 acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or
16 property.

17 97. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and
18 the Class are entitled to restitution of the wages withheld and retained by Defendants during a period
19 that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to
20 California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

21 **SEVENTH CAUSE OF ACTION**

22 **(Violation of California Labor Code § 2699, et seq.)**

23 **(Against All Defendants)**

24 98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
25 allegation set forth above.

26 99. Plaintiff brings her Seventh Cause of Action as a representative action on behalf of
27 herself and all other Aggrieved Employees in the capacity as a private attorney general pursuant to the
28 Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* ("PAGA").

100. PAGA specifically provides for a private right of action to recover civil penalties for

1 violations of the Labor Code as follows: “Notwithstanding any other provision of law, any provision of
2 this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
3 Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees,
4 for a violation of this code, may, as an alternative, be recovered through a civil action brought by an
5 aggrieved employee on behalf of herself or herself and other current or former employees pursuant to
6 the procedures specified in section 2699.3.” Labor Code § 2699(a).

7 101. Plaintiff was employed by Defendants and the Labor Code violations alleged above were
8 committed against her during her time of employment. Plaintiff is therefore, an “aggrieved employee”
9 under PAGA.

10 102. As set forth in detail above, during all times relevant to this Action, Defendants have
11 routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor Codes by:

- 12 a. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to take
13 duty-free rest periods;
- 14 b. Failing to pay Plaintiff and the Aggrieved Employees an additional hour of premium pay
15 for rest period violations in violation of Labor Code § 226.7;
- 16 c. Failing to provide legally compliant and duty-free meal periods to Plaintiff and the
17 Aggrieved Employees;
- 18 d. Failing to pay Plaintiff and the Aggrieved Employees an additional hour of premium pay
19 for meal period violations in violation of Labor Code §§ 226.7 and 512;
- 20 e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at the end of their
21 employment in violation of Labor Code § 203;
- 22 f. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during
23 employment in violation of Labor Code § 204;
- 24 g. Failing to maintain accurate payroll and time records in violation of Labor Code section
25 1174 and the applicable IWC Wage Order(s);
- 26 h. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate,
27 itemized wage statements in violation of Labor Code § 226;
- 28 i. Failing to comply with Cal/WARN Act notice requirements;
- j. Failing to pay Plaintiff and other Aggrieved Employees the statutory minimum wages

1 for all hours worked in violation of Labor Code §§ 1194, 1194.2, and 1197; and

2 k. Failing to pay Plaintiff and other Aggrieved Employees all overtime compensation
3 earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198.

4 103. California Labor Code sections 2699 and 2699.5, Plaintiff, individually and on behalf of
5 herself and the Aggrieved Employees and the State of California, requests and is entitled to recover
6 penalties against Defendants for the Labor Code violations described above, including but not limited
7 to penalties under California Code of Regulations Title 8 section 11070, penalties under California
8 Labor Code sections 2699, 558, 204, 510, 210, 226, 226.3, 1174.5, 1194, 1194.2, 1197, 1198, 1403 and
9 any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.
10 The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at
11 trial.

12 104. Pursuant to Labor Code § 2699.3, on or about November 13, 2023 and on December 11,
13 2023 Plaintiff, through her counsel of record, gave written notice by online filing with the Labor and
14 Workforce Development Agency (“LWDA”) and by certified mail to the Defendants, of the specific
15 provisions of the Labor Code and IWC Wage Orders that Defendants have violated, including the facts
16 and theories to support the violations set forth in paragraph 103 (a)-(h), and of Plaintiff’s intent to bring
17 a claim for civil penalties under PAGA. On August 5, 2024, Plaintiff supplemented the original PAGA
18 claim notice letter, citing additional violations of the California Labor Codes, set forth in paragraph 103
19 (j)-(k). Plaintiff also paid the filing fee required under Labor Code § 2699.3. To date, the LWDA has
20 not indicated that it intends to investigate the violations discussed in the PAGA notice. Accordingly,
21 Plaintiff has fulfilled all administrative prerequisites to the pursuit of her PAGA claim on behalf herself
22 and other Aggrieved Employees pursuant to Labor Code § 2699.3. Attached hereto as **Exhibit 1** is a
23 true and correct copy of the August 5, 2024 supplemental PAGA claim notice.

24 105. Plaintiff was compelled to retain the services of counsel to file this court action to protect
25 her interests and the Aggrieved Employees, and to assess and collect the civil penalties owed by
26 Defendants. Plaintiff therefore seeks an award of reasonable attorneys’ fees and costs pursuant to Labor
27 Code § 2699(g)(1), and any other applicable statute.

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Eighth Cause of Action

(Violation of Labor Code §§ 1194, 1194.2, and 1197)

(Against All Defendants)

106. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

107. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194, 1197 and 1198 which provide that all non-exempt employees are entitled to all minimum wages for all hours worked, and provide a private right of action for the failure to pay all minimum wage compensation for all work performed.

108. At all times relevant herein, Defendants were required to properly compensate Plaintiff and Class Members for all hours worked pursuant to California Labor Code §§ 1194, 1197 and 1198, and the applicable IWC Wage Order. Wage Order 14, Section 5 requires an employer to pay to every employee on the established payday for the period involved not less than the applicable minimum wage for all hours worked in the payroll period. Defendants caused Plaintiff and the Class Members to work hours in a workweek but did not properly compensate Plaintiff and the Class Members at least minimum wages for such hours.

109. At all times relevant herein, Defendants lacked good faith and had no reasonable grounds for believing that their practices in failing to pay all minimum wages owed at the applicable rate was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the Industrial Welfare Commission. Defendants, therefore, in addition to owing minimum wages to Plaintiff and the Class Members, also owe liquidated damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to Labor Code § 1194.2.

110. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the Class Members in a civil action for the unpaid amount of minimum wages owing, including interest thereon, as well as statutory penalties, liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 14, California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

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Ninth Cause of Action
(Violation of Labor Code §§ 204, 510, 558, 1194, 1198)
(Against All Defendants)

111. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

112. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all overtime wages for all overtime worked (hours in excess of 9.5 hours per day or 50 hours per workweek during the time period between January 1, 2019 and December 31, 2019, hours in excess of 9 hours per day or 50 hours per workweek during the time period January 1, 2020 to December 31, 2020; hours in excess of 8.5 hours per day or 45 hours per workweek during the time period January 1, 2021 to December 31, 2021; and/or hours in excess of 8 hours per day or 40 hours per workweek, during the time period January 1, 2022 to present), and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

113. At all times relevant herein, Defendants were required to properly compensate Plaintiff and the other Class Members for all overtime hours worked pursuant to California Labor Code §§ 510 and 1194, and the applicable Wage Order. Defendants caused Plaintiff and the Class Members to work overtime and/or double-time hours but did not properly compensate Plaintiff and the Class Members at the correct overtime or double overtime rate of pay for such hours.

114. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the Class Members in a civil action for the unpaid amount of overtime premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 210, 216, 218.5, 218.6, 510, 558, 1194 and 1198, Wage Order 14, California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public similarly situated, and as a private attorney general, prays for relief and judgment against Defendants, jointly and severally, as follows:

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Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class and the WARN Act Subclass;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names, dates of employment, and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the Class;
6. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;
7. For all actual, consequential, and incidental losses and damages, according to proof;
8. For premium wages pursuant to California Labor Code section 226.7;
9. For pre-judgment interest on any unpaid wages from the date such amounts were due;
- and
10. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

11. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the Class;
12. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;
13. For all actual, consequential, and incidental losses and damages, according to proof;
14. For premium wages pursuant to California Labor Code section 226.7;
15. For pre-judgment interest on any unpaid wages from the date such amounts were due;
16. For reasonable attorneys' fees and costs of suit incurred herein; and

1 17. For such other and further relief as the Court may deem just and proper.

2 **As to the Third Cause of Action**

3 18. That the Court declare, adjudge and decree that Defendants violated California Labor
4 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
5 termination of the employment of Plaintiff and other Class Members no longer employed by Defendants;

6 19. For all actual, consequential, and incidental losses and damages, according to proof;

7 20. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff
8 and other Class Members who have left Defendants' employ;

9 21. For pre-judgment interest on any unpaid compensation from the date such amounts were
10 due; and

11 22. For such other and further relief as the Court may deem just and proper.

12 **As to the Fourth Cause of Action**

13 23. That the Court declare, adjudge and decree that Defendants violated the record keeping
14 provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and
15 the Class, and willfully failed to provide accurate itemized wage statements thereto;

16 24. For actual, consequential and incidental losses and damages, according to proof;

17 25. For statutory penalties pursuant to California Labor Code section 226(e); and

18 26. For such other and further relief as the Court may deem just and proper.

19 **As to the Fifth Cause of Action**

20 27. That the Court declare, adjudge and decree that Defendants violated the notice provisions
21 of the Cal. Warn Act as set forth in California Labor Code sections 1400 et seq. as to Plaintiff and the
22 WARN Act Subclass;

23 28. For actual, consequential and incidental losses and damages, according to proof pursuant
24 to California Labor Code section 1402;

25 29. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
26 Labor Code section 1404;

27 30. For such other and further relief as the Court may deem just and proper.

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As to the Sixth Cause of Action

1 31. That the Court declare, adjudge and decree that Defendants violated California Business
2 and Professions Code sections 17200, *et seq.* by failing to provide all meal and rest periods to Plaintiff
3 and the Class, or premium compensation in lieu thereof, failing to pay Plaintiff's and other Class
4 Members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating
5 California Labor Code sections 226(a), 2800, and 2802;

6 32. For restitution of unpaid wages to Plaintiff and the Class and all pre-judgment interest
7 from the day such amounts were due and payable;

8 33. For the appointment of a receiver to receive, manage and distribute any and all funds
9 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result
10 of violation of California Business and Professions Code sections 17200, *et seq.*;

11 34. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
12 Code of Civil Procedure section 1021.5;

13 35. For injunctive relief to ensure compliance with this section, pursuant to California
14 Business and Professions Code sections 17200, *et seq.*; and

15 36. For such other and further relief as the Court may deem just and proper.

16 **As to the Seventh Cause of Action**

17 37. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor Code;

18 38. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210,
19 558, 226, 226.3, 1174.5, 1403, and all other penalties allowed by the California Labor Code and/or other
20 applicable statutes; and

21 39. For such other relief as the Court deems just and proper.

22 **As to the Eighth Cause of Action**

23 40. That the Court declare, adjudge and decree that Defendants violated California Labor
24 Code sections 1194, 1194.2 and 1197 by willfully failing to pay all minimum wages to Plaintiff and
25 other Class Members;

26 41. For all actual, consequential, and incidental losses and damages, according to proof;

27 42. For pre-judgment interest on any unpaid compensation from the date such amounts were
28 due; and

 43. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

44. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 204, 510, 558, 1194, and 1198 by willfully failing to pay all overtime wages to Plaintiff and other Class Members;

45. For all actual, consequential, and incidental losses and damages, according to proof;

46. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

47. For such other and further relief as the Court may deem just and proper.

DATED: October 25, 2024

NORTH LAW, P.C.

Hengameh S. Safaei
Attorneys for Plaintiff ERIKA ALVAREZ,
individually and on behalf of others
similarly situated

Dated: October 25, 2024

EN Law Group, APC

Elizabeth Nguyen
Attorneys for Plaintiff ERIKA ALVAREZ,
individually and on behalf of others similarly situated

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DATED: October 25, 2024

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Dated: October 25, 2024

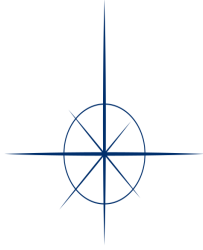
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SECOND AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT

EXHIBIT 1

EXHIBIT 1



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August 5, 2024

VIA E-MAIL

Quail H Farms LLC
Jack E. Smith
c/o Neumiller & Beardslee
Lisa Blanco Jimenez
Debbie Supnet
3121 W. March Lane, Suite 100
Stockton, CA 95219
Email: ljimenez@neumiller.com
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VIA ONLINE FILING SYSTEM

PAGA Administrator
California Labor & Workforce Development Agency (LWDA)
pagafileings@dir.ca.gov

Re: Erika Alvarez

**SUPPLEMENT TO AMENDED NOTICE OF LABOR CODE VIOLATIONS
PURSUANT TO LABOR CODE § 2699.3**

Dear PAGA Administrator at California Labor & Workforce Development Agency:

This firm represents Erika Alvarez (“Ms. Alvarez”) in connection with claims arising from her employment with Quail H Farms LLC, a California limited liability (“Quail H” or Employer”) and any other entity or person acting on behalf of Employer pursuant to Labor Code sections 558, subdivision (a), and 558.1, including Jack E. Smith (collectively “Defendants”). This letter is to supplement the letters sent by my office on behalf of Ms. Alvarez on November 13, 2023 and December 11, 2023 (collectively the “LWDA Letters”), regarding the Labor Code violations committed by Defendants against Ms. Alvarez and similarly aggrieved employees. Copies of the LWDA Letters are attached as **Exhibit A** and incorporated herein by reference. Plaintiff filed suit relating to those claims in the Superior Court of Merced County and the First Amended Class

Action and Representative Action Complaint was filed on or about January 10, 2024. The case is pending.

Ms. Alvarez is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendants’ numerous violations of the Labor Code as set forth in the LWDA Letters and below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Ms. Alvarez intends to amend her lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all current and former hourly employees who worked in California who worked, at least in part, during the one year immediately preceding the date of the LWDA Letters through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

In addition to the Labor Code violations identified in the LWDA Letters, Ms. Alvarez alleges Defendants are also liable for the following:

Minimum Wage Violations

Defendants were required to pay Ms. Alvarez and other Aggrieved Employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 14, § 4. During Ms. Alvarez’ employment with Defendants, Defendants would keep track of Ms. Alvarez and other Aggrieved Employees’ time worked and would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. This time-shaving and/or rounding practice utilized by Defendants was not even-handed over time and would almost exclusively round and shave in Defendants’ favor such that Ms. Alvarez and other Aggrieved Employees were routinely unpaid for her time worked. Additionally, during Ms. Alvarez’ employment with Defendants, Defendants required Ms. Alvarez and other Aggrieved Employees to wait in line at the timeclock in order to clock in at the start of their shifts, directed employees to arrive at work at least 10 minutes prior to the start of their scheduled start time, and/or perform pre-shift job duties off-the-clock, including but not limited, turning on the machines and waiting for them to warm up, cleaning machines, changing out the water on machines. Despite being under Defendants’ direction and control Defendants would not compensate Ms. Alvarez and other Aggrieved Employees for this time. As a result, Defendants failed to pay Ms. Alvarez and other Aggrieved Employees all required minimum wages.

Overtime Violations

Defendants were required to pay Ms. Alvarez and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek starting January 1, 2022. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 14, § 3. According to Labor Code § 510(a), “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.” Defendants were required to pay Ms. Alvarez and other Aggrieved Employees

overtime wages for all hours worked in excess of eight and one-half hours per workday and/or forty-five hours per workweek starting January 1, 2021. Defendants were required to pay Ms. Alvarez and other Aggrieved Employees overtime wages for all hours worked in excess of nine hours per workday and/or fifty-five hours per workweek starting January 1, 2020. Defendants were required to pay Ms. Alvarez and other Aggrieved Employees overtime wages for all hours worked in excess of nine and one-half hours per workday and/or fifty hours per workweek starting January 1, 2019.

As described above, during Ms. Alvarez' employment with Defendants, Defendants would keep track of Ms. Alvarez and other Aggrieved Employees' time worked and would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. This time-shaving and/or rounding practice utilized by Defendants was not even-handed over time and would almost exclusively round and shave in Defendants' favor such that Ms. Alvarez and other Aggrieved Employees were routinely unpaid for their time worked. Additionally, during Ms. Alvarez' employment with Defendants, Defendants required Ms. Alvarez and other Aggrieved Employees to wait in line at the timeclock in order to clock in at the start of their shifts, directed employees to arrive at work prior to the start of their scheduled start time and refused to compensate them for this time, and/or perform pre-shift job duties off-the-clock, including but not limited, turning on the machines and waiting for them to warm up, cleaning machines, changing out the water on machines. Despite being under Defendants' direction and control, Defendants would not compensate Ms. Alvarez and other Aggrieved Employees for this time. As a result, Defendants failed to pay Ms. Alvarez and other Aggrieved Employees all required overtime wages.

As described in the prior LWDA Letters, Ms. Alvarez was employed by Defendant as an hourly, nonexempt employee from on or about November 2022 until on or about November 2023.

Ms. Alvarez has filed a civil action against Defendants on a proposed class and representative PAGA basis, which is presently pending in the Superior Court in the County of Merced. In that civil action, Ms. Alvarez has conducted formal discovery. With that foundation, Ms. Alvarez is informed and believes, and therefore alleges, that Defendants also committed the following Labor Code violations:

- a) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Ms. Alvarez and other Aggrieved Employees the statutory minimum wage for all hours worked; and
- b) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Alvarez and other Aggrieved Employees all overtime compensation earned.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Ms. Alvarez is prepared to seek to leave to amend to add these additional claims to the pending class and representative PAGA lawsuit in the Superior Court of the County of Merced should the LWDA take no action.

August 5, 2024
Page 4

Please contact me should you require additional information.

Very truly yours,
NORTH LAW P.C.

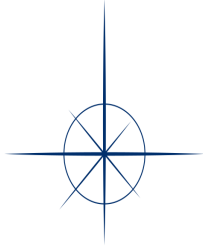
A handwritten signature in purple ink, appearing to read "H. Safaei", with a stylized, cursive script.

Hengameh S. Safaei

Cc: Elizabeth Nguyen, Esq. (via email)

Enclosure

EXHIBIT A



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November 13, 2023

VIA CERTIFIED MAIL

Jackie E. Smith II
Agent for Service of Process
Quail H Farms LLC
1800 Youd Road
Winton, CA 95388

Walter J. Schmidt
Agent for Service of Process
A.V. Thomas Produce, Inc.
1501 F. Street
Modesto, CA 95354

VIA ONLINE FILING SYSTEM

PAGA Administrator
California Labor & Workforce Development Agency (LWDA)
pagafileings@dir.ca.gov

Re: Erika Alvarez

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE § 2699.3

Dear PAGA Administrator at California Labor & Workforce Development Agency:

This firm represents Erika Alvarez (“Ms. Alvarez”) in connection with claims arising from her employment with Quail H Farms LLC, a California limited liability (“Quail H Farms”) company and/or A.V. Thomas Produce, Inc., a California corporation (“A.V. Thomas” and together with Quail H, “Employer”) and any other entity or person acting on behalf of Employer pursuant to Labor Code sections 558, subdivision (a), and 558.1, including Jack E. Smith and/or Jackie E. Smith.

Employer is a grower/packer/shipper of sweet potatoes and yam. Ms. Alvarez is informed and believes that Quail H merged with A.V. Thomas in late 2023. Ms. Alvarez is an “aggrieved

employee” as defined by Labor Code section 2699 *et seq.* due to Employer’s violations of the Labor Code as set forth below. The purpose of this Notice is to comply with Labor Code section 2699.3 which requires aggrieved employees to notify the employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. A further purpose of this Notice is to comply with California Labor Code section 2810.3 which requires notice to a “client employer” of violations under Labor Code section 2810.3, subd. (b) with respect to the payment of wages.

From approximately November 2022 to November 2023, Ms. Alvarez worked for Employer in production as a full-time, hourly, non-exempt employee. Ms. Alvarez also was a machine operator for Employer. During her employment, Ms. Alvarez performed work at Employer’s farm and facilities located in Livingston, California. The job was onerous. Ms. Alvarez schedule was normally from 7:00 a.m. to 3:30 p.m., Monday through Friday. During harvest, Ms. Alvarez worked a more demanding schedule which was usually from 6:00 a.m. to 5:00 or 5:30 p.m., Monday through Saturday.

According to publicly released data, Quail H received two Paycheck Protection Program (“PPP”) loans totaling over \$1.5 million for approximately 95 jobs. <https://www.federalpay.org/paycheck-protection-program/quail-h-farms-llc-livingston-ca>

On or about November 11, 2023, following an announcement that Quail H and A.V. Thomas had merged, Employer abruptly terminated Ms. Alvarez employment without warning. Employer failed to pay Ms. Alvarez all of her final wages at the time of her termination. Instead, Employer’s management instructed Ms. Alvarez to return to Employer on November 17, 2023 to pick up her final paycheck.

Pursuant to the California Private Attorneys General Act (“PAGA”), Ms. Alvarez seeks to represent and recover civil penalties on behalf of herself and other non-exempt “aggrieved employees” who were subject to the Labor Code violations alleged herein. For purposes of this Notice, “aggrieved employees” includes all of Employer’s current and former non-exempt employees in California who were subject to the following alleged policies and practices within one-year preceding the date of this Notice and ongoing (the “PAGA Period”). California Judicial Council Emergency Rule 9 tolled the statute of limitations for civil causes of action from April 6, 2020 until October 1, 2020. Therefore, the applicable PAGA Period is extended six months.

On information and belief, Employer committed the following violations of the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order(s), including, but not limited to, IWC Wage Order 14-2001. The claims made on behalf of Ms. Alvarez and other aggrieved employees are based upon the following facts and theories.

Meal Period Violations

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. A second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual

consent of the employer and employee only if the first meal period was not waived. LABOR CODE § 512. In general, when an employee works for a work period of more than five hours, a meal period must be provided no later than the end of the employee's fifth hour of work. When an employee works for a period of more than 10 hours, a second meal period must be provided no later than the end of the employee's tenth hour of work. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).

Due to Employer's meal period policies and/or practices, Employer failed to provide Ms. Alvarez and, on information and belief, all other aggrieved employees all required timely, uninterrupted, duty-free 30-minute meal periods at the required intervals. *See* LABOR CODE §§ 226.7 and 512; IWC Wage Order 1-2001 § 11. When Ms. Alvarez and other aggrieved employees began their shift at 7:00 a.m., Ms. Alvarez and other aggrieved employees were not provided a meal period before the end of the fifth hour of work. Similarly, when Ms. Alvarez began her shift at 6:00 a.m., she was not provided a meal period before the end of her fifth hour of work. In addition, when Ms. Alvarez works shifts in excess of ten (10) hours, she was not provided a second meal period. Ms. Alvarez is informed and believes that Employer's policies, practices, and procedures are responsible for the violations alleged above and prevented Ms. Alvarez and other aggrieved employees from taking timely, complete, and duty-free meal periods at the required intervals, including before the end of each employees' fifth hour of work. The nature of the work performed by Ms. Alvarez and all other aggrieved employees did not prevent them from being relieved of all duties during meal periods and Employer apparently did not have any policy or practice pertaining to meal period violations.

Upon information and belief (1) Employer did not have legally-compliant policies regarding the provision and timing of uninterrupted meal periods and/or systematically disregarded its own purported meal period policies; (2) Employer's management affecting hourly non-exempt employees failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Ms. Alvarez and other aggrieved employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Ms. Alvarez and other aggrieved employees about their right to premium wages for non-compliant meal periods; (5) the nature of the work performed by Ms. Alvarez and other aggrieved employees did not prevent them from being relieved of all duties during meal periods; and (6) Employer apparently did not have any policy or practice pertaining to meal period violations. Further, Employer did not maintain a timekeeping system whereby employees could clock in for meal periods, or rest periods.

Despite the aforementioned facts and Employer's violations, Employer did not pay an additional hour of premium pay to Ms. Alvarez and, on information and belief, all other aggrieved employees at their respective regular rates of pay for each meal period violation in accordance with Labor Code section 226.7. *See, Safeway, Inc. v. Superior Court (Esparza)*, 238 Cal.App.4th 1138, 1159 (2015) (failure to pay break premiums is indicative of "deep, system-wide error"). As a result, Ms. Alvarez and all other aggrieved employees are owed an additional hour of wages at their respective regular rate of compensation for each workday they experienced a meal period violation. LABOR CODE § 226.7 ("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 workday that the meal or rest period is not provided.")

As a further result of Employer's failure to pay meal period premium wages, Employer failed to timely pay Ms. Alvarez and other aggrieved employees all wages owed at the time of their separations from employment. As a further result of Employer's failure to pay meal period premium wages, Employer failed to timely pay Ms. Alvarez and other aggrieved employees all wages earned at least twice during each calendar month. LABOR CODE § 204; *see also, Naranjo v. Spectrum Security Services, Inc.* 13 Cal.5th 93 (2022).

Rest Period Violations

The applicable Wage Order(s) and Labor Code sections 226.7, 516, and 558 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. Upon information and belief, Employer did not authorize and permit Ms. Alvarez and all other aggrieved employees to take all paid, interrupted, and duty-free rest periods to which they are legally entitled, including third rest breaks. Despite its violations, Employer did not pay an additional hour of premium to Ms. Alvarez and, on information and belief, all other aggrieved employees at their respective regular rates of pay for each rest period violation in accordance with Labor Code section 226.7. LABOR CODE § 226.7 ("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 workday that the meal or rest period is not provided."). Employer apparently also did not have any policy or practice pertaining to rest period violations. As a result, Ms. Alvarez and all other aggrieved employees are owed an additional hour of premium wages at their regular rate of compensation for each workday they experienced a rest period violation.

As a further result of Employer's failure to pay rest period premium wages, Employer failed to furnish accurate itemized wage statements and failed timely pay Ms. Alvarez and other aggrieved employees all wages owed at the time of their separations from employment. As a further result of Employer's failure to pay rest period premium wages, Employer failed to timely pay Ms. Alvarez and other aggrieved employees all wages earned at least twice during each calendar month. LABOR CODE § 204; *Naranjo v. Spectrum Security Services, Inc.* 13 Cal.5th 93 (2022).

Wage Statement Violations

Employer was required to furnish Ms. Alvarez and all other aggrieved employees with timely, complete, and accurate itemized wage statements that showed, among other things: (1) gross wages earned, (2) total hours worked by the employee (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate 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 only the last four digits of her or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. LABOR CODE § 226, subd. (a); *see also, LABOR CODE § 1174, subd. (d).*

As a result of Employer's unlawful policies, Employer maintained inaccurate records and issued inaccurate wage statements to Ms. Alvarez and other aggrieved employees in violation Labor Code § 226. *Naranjo v. Spectrum Security Services, Inc.* 13 Cal.5th 93 (2022). On information and belief, Employer's failure to comply with its wage statement obligations was knowing and intentional, and Ms. Alvarez and all other aggrieved employees have suffered injury as a result. Further, Ms. Alvarez and other aggrieved employees can prevail on a claim for PAGA penalties under Labor Code § 226 without having to show injury or willfulness. *See Jimenez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) ("a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1)."); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) ("requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of Section 226(a)").

Labor Code section 226.3 provides in relevant part: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law."

As a result of Employer's failure to furnish Ms. Alvarez and other aggrieved employees timely, accurate, and complete wage statements in accordance with Labor Code § 226, subdivision (a), Ms. Alvarez and other aggrieved employee may recover Labor Code § 226.3 penalties under PAGA for in lieu of the normal penalties provided for in Labor Code § 226.

Waiting Time Penalties

In California, public policy favors the full and prompt payment of wages due an employee. Labor Code sections 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Employer failed to timely pay Ms. Alvarez, and on information and belief, other aggrieved employees, all of their final wages at the time of their separation, which final pay was to include, but did not include, all wages and premiums for noncompliant meal periods and rest breaks. Employer's failure to pay all final wages due to Ms. Alvarez and aggrieved employees was willful and thus entitles aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Employer failed to pay their final wages after separation, up to a maximum of thirty (30) days.

Failure to Maintain Accurate Records

Despite its record-keeping obligations, and based on among other things, the above described policies and practices, Employer failed to maintain accurate records on behalf of Ms. Alvarez and, on information and belief, all other aggrieved employees. LABOR CODE § 1174.

As an "aggrieved employee" Ms. Alvarez intends to initiate a civil action on behalf of herself and all other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations described above.

Based on information and belief and investigation to date, Employer has committed the following alleged Labor Code violations:

1. Labor Code §§ 226.7, 512, and 558 by failing to provide Ms. Alvarez and all other aggrieved employees with all lawful, timely, uninterrupted, and duty-free meal periods;
2. Labor Code §§ 226.7, 516, and 558 by failing to provide Ms. Alvarez and all other aggrieved employees with all lawful, timely, uninterrupted, and duty-free rest periods;
3. Labor Code §§ 226 and 226.3 by failing to furnish Ms. Alvarez and all other aggrieved employees with timely, accurate and compliant itemized wage statements;
4. Labor Code §§ 201-203 by failing to timely pay all final wages due to Ms. Alvarez and all other aggrieved employees upon their separation of employment;
5. Labor Code § 204 by failing to pay Ms. Alvarez and all other aggrieved employees all wages earned at least twice during each calendar month;
6. Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Ms. Alvarez and all other aggrieved employees.

Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please notify us within 65 calendar days of the postmark date of this Notice whether the LWDA intends to investigate these alleged violations.

This Notice sets forth the basis of Ms. Alvarez's grievances, rights, and remedies under the Labor Code and the PAGA. We appreciate your attention to this matter.

Please do not hesitate to contact us if you require any additional information.

Very truly yours,
NORTH LAW P.C.

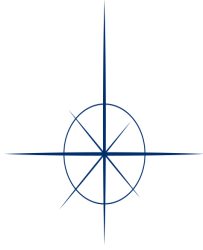


Hengameh S. Safaei

cc: (via certified mail)

Jackie E. Smith II, Agent for Service of Process, Quail H Farms LLC, 1800 Youd Road
Winton, CA 95388

Walter J. Schmidt, Agent for Service of Process, A.V. Thomas Produce, Inc., 1501 F. Street
Modesto, CA 95354



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Hengameh S. Safaei, Esq.

safaei@northlegalpc.com

Direct: (213) 868-3233

December 11, 2023

VIA CERTIFIED MAIL

Jackie E. Smith II
Agent for Service of Process
Quail H Farms LLC
1800 Youd Road
Winton, CA 95388

VIA ONLINE FILING SYSTEM

PAGA Administrator
California Labor & Workforce Development Agency (LWDA)
pagafilings@dir.ca.gov

Re: Erika Alvarez

**AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE
§ 2699.3**

Dear PAGA Administrator at California Labor & Workforce Development Agency:

This firm represents Erika Alvarez (“Ms. Alvarez”) in connection with claims arising from her employment with Quail H Farms LLC, a California limited liability (“Quail H” or Employer”) and any other entity or person acting on behalf of Employer pursuant to Labor Code sections 558, subdivision (a), and 558.1, including Jack E. Smith, Jackie E. Smith, and James Hennington.

Employer is a grower/packer/shipper of sweet potatoes and yam. Ms. Alvarez is an “aggrieved employee” as defined by Labor Code section 2699 *et seq.* due to Employer’s violations of the Labor Code as set forth below. The purpose of this Notice is to comply with Labor Code section 2699.3 which requires aggrieved employees to notify the employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

From approximately November 2022 to November 2023, Ms. Alvarez worked for Employer in production as a full-time, hourly, non-exempt employee. Ms. Alvarez also was a machine operator for Employer. During her employment, Ms. Alvarez performed work at Employer's farm and facilities located in Livingston, California. The job was onerous. Ms. Alvarez schedule was normally from 7:00 a.m. to 3:30 p.m., Monday through Friday. During harvest, Ms. Alvarez worked a more demanding schedule which was usually from 6:00 a.m. to 5:00 or 5:30 p.m., Monday through Saturday.

According to publicly released data, Quail H received two Paycheck Protection Program ("PPP") loans totaling over \$1.5 million for approximately 95 jobs. <https://www.federalpay.org/paycheck-protection-program/quail-h-farms-llc-livingston-ca>

On or about November 11, 2023, following an announcement that Quail H and another company, A.V. Thomas, had supposedly merged, Employer abruptly terminated Ms. Alvarez employment without warning. Employer failed to pay Ms. Alvarez all of her final wages at the time of her termination. Instead, Employer's management instructed Ms. Alvarez to return to Employer on November 17, 2023 to pick up her final paycheck. Employer's termination notice to Ms. Alvarez states her termination was effective November 12, 2023 and that the "Business Closed." On information and belief, Employer terminated its entire workforce without advance notice.

Pursuant to the California Private Attorneys General Act ("PAGA"), Ms. Alvarez seeks to represent and recover civil penalties on behalf of herself and other non-exempt "aggrieved employees" who were subject to the Labor Code violations alleged herein. For purposes of this Notice, "aggrieved employees" includes all of Employer's current and former non-exempt employees in California who were subject to the following alleged policies and practices within one-year preceding the date of this Notice and ongoing (the "PAGA Period"). California Judicial Council Emergency Rule 9 tolled the statute of limitations for civil causes of action from April 6, 2020 until October 1, 2020. Therefore, the applicable PAGA Period is extended six months.

On information and belief, Employer committed the following violations of the Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order(s), including, but not limited to, IWC Wage Order 14-2001. The claims made on behalf of Ms. Alvarez and other aggrieved employees are based upon the following facts and theories.

Meal Period Violations

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. A second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived. LABOR CODE § 512. In general, when an employee works for a work period of more than five hours, a meal period must be provided no later than the end of the employee's fifth hour of work. When an employee works for a period of more than 10 hours, a second meal period must be provided no

later than the end of the employee's tenth hour of work. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).

Due to Employer's meal period policies and/or practices, Employer failed to provide Ms. Alvarez and, on information and belief, all other aggrieved employees all required timely, uninterrupted, duty-free 30-minute meal periods at the required intervals. *See* LABOR CODE §§ 226.7 and 512; IWC Wage Order 1-2001 § 11. When Ms. Alvarez and other aggrieved employees began their shift at 7:00 a.m., Ms. Alvarez and other aggrieved employees were not provided a meal period before the end of the fifth hour of work. Similarly, when Ms. Alvarez began her shift at 6:00 a.m., she was not provided a meal period before the end of her fifth hour of work. In addition, when Ms. Alvarez works shifts in excess of ten (10) hours, she was not provided a second meal period. Ms. Alvarez is informed and believes that Employer's policies, practices, and procedures are responsible for the violations alleged above and prevented Ms. Alvarez and other aggrieved employees from taking timely, complete, and duty-free meal periods at the required intervals, including before the end of each employees' fifth hour of work. The nature of the work performed by Ms. Alvarez and all other aggrieved employees did not prevent them from being relieved of all duties during meal periods and Employer apparently did not have any policy or practice pertaining to meal period violations.

Upon information and belief (1) Employer did not have legally-compliant policies regarding the provision and timing of uninterrupted meal periods and/or systematically disregarded its own purported meal period policies; (2) Employer's management affecting hourly non-exempt employees failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Ms. Alvarez and other aggrieved employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Ms. Alvarez and other aggrieved employees about their right to premium wages for non-compliant meal periods; (5) the nature of the work performed by Ms. Alvarez and other aggrieved employees did not prevent them from being relieved of all duties during meal periods; and (6) Employer apparently did not have any policy or practice pertaining to meal period violations. Further, Employer did not maintain a timekeeping system whereby employees could clock in for meal periods, or rest periods.

Despite the aforementioned facts and Employer's violations, Employer did not pay an additional hour of premium pay to Ms. Alvarez and, on information and belief, all other aggrieved employees at their respective regular rates of pay for each meal period violation in accordance with Labor Code section 226.7. *See, Safeway, Inc. v. Superior Court (Esparza)*, 238 Cal.App.4th 1138, 1159 (2015) (failure to pay break premiums is indicative of "deep, system-wide error"). As a result, Ms. Alvarez and all other aggrieved employees are owed an additional hour of wages at their respective regular rate of compensation for each workday they experienced a meal period violation. LABOR CODE § 226.7 ("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 workday that the meal or rest period is not provided.")

As a further result of Employer's failure to pay meal period premium wages, Employer failed to timely pay Ms. Alvarez and other aggrieved employees all wages owed at the time of their separations from employment. As a further result of Employer's failure to pay meal period

premium wages, Employer failed to timely pay Ms. Alvarez and other aggrieved employees all wages earned at least twice during each calendar month. LABOR CODE § 204; *see also*, *Naranjo v. Spectrum Security Services, Inc.* 13 Cal.5th 93 (2022).

Rest Period Violations

The applicable Wage Order(s) and Labor Code sections 226.7, 516, and 558 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. Upon information and belief, Employer did not authorize and permit Ms. Alvarez and all other aggrieved employees to take all paid, interrupted, and duty-free rest periods to which they are legally entitled, including third rest breaks. Despite its violations, Employer did not pay an additional hour of premium to Ms. Alvarez and, on information and belief, all other aggrieved employees at their respective regular rates of pay for each rest period violation in accordance with Labor Code section 226.7. LABOR CODE § 226.7 (“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 workday that the meal or rest period is not provided.”). Employer apparently also did not have any policy or practice pertaining to rest period violations. As a result, Ms. Alvarez and all other aggrieved employees are owed an additional hour of premium wages at their regular rate of compensation for each workday they experienced a rest period violation.

As a further result of Employer’s failure to pay rest period premium wages, Employer failed to furnish accurate itemized wage statements and failed timely pay Ms. Alvarez and other aggrieved employees all wages owed at the time of their separations from employment. As a further result of Employer’s failure to pay rest period premium wages, Employer failed to timely pay Ms. Alvarez and other aggrieved employees all wages earned at least twice during each calendar month. LABOR CODE § 204; *Naranjo v. Spectrum Security Services, Inc.* 13 Cal.5th 93 (2022).

Cal. WARN Act Violation

On information and belief, Employer employed, or has employed within the preceding 12 months, 75 or more employees in California. On information and belief, Employer did not notify affected employees, the State of California Economic Development Department, the local Workforce Investment Board, or the chief elected official of each city or county in California in which the closure of any of Employer’s California locations occurred, at least 60 days in advance of those closures. As a result of Employer’s failure to give notice, Ms. Alvarez and affected aggrieved employees were deprived of any transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market.

Ms. Alvarez and other aggrieved employees were subjected to a “mass layoff” by Employer within the meaning of California Labor Code sections 1400(c) and (d) in that each was subjected to a separation from employment for lack of funds or lack of work, and Employer laid off 50 or more employees during a 30-day period at its covered establishments. On information and belief, Ms. Alvarez and other aggrieved employees were subjected to a “Termination” by

Employer when Employer ceased operations at its covered establishments. Employer did not provide Ms. Alvarez and other aggrieved employees written notice of the “mass layoff” or “termination” 60 days in advance of the “mass layoff” or “termination.” Employer’s actions constituted a “mass layoff” or “termination” without written notice to the Ms. Alvarez and other aggrieved employees 60 days in advance, thereby depriving Ms. Alvarez and other aggrieved employees of the notice required by the California WARN Act. Employer is liable to Ms. Alvarez and other aggrieved employees for: (1) back pay either at the average regular rate of compensation received by them during the last three years of their employment, or at their final rate of pay, whichever is higher; and (2) the value of the cost of any benefits to which they would have been entitled had their employment continued. Cal. Labor Code § 1402. Employer is liable to Ms. Alvarez and other aggrieved employees for up to 60 days, and interest thereon.

Employer did not notify affected employees, the State of California, Employment Development Department or the chief elected officials of any affected city or county government in advance of the “mass layoff” or “termination.” Pursuant to California Labor Code section 1403, Ms. Alvarez and other aggrieved employees are entitled to recover a civil penalty of five hundred dollars (\$500) for each day of Employer’s violation of the Cal WARN Act.

Wage Statement Violations

Employer was required to furnish Ms. Alvarez and all other aggrieved employees with timely, complete, and accurate itemized wage statements that showed, among other things: (1) gross wages earned, (2) total hours worked by the employee (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate 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 only the last four digits of her or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. LABOR CODE § 226, subd. (a); *see also*, LABOR CODE § 1174, subd. (d).

As a result of Employer’s unlawful policies, Employer maintained inaccurate records and issued inaccurate wage statements to Ms. Alvarez and other aggrieved employees in violation Labor Code § 226. *Naranjo v. Spectrum Security Services, Inc.* 13 Cal.5th 93 (2022). On information and belief, Employer’s failure to comply with its wage statement obligations was knowing and intentional, and Ms. Alvarez and all other aggrieved employees have suffered injury as a result. Further, Ms. Alvarez and other aggrieved employees can prevail on a claim for PAGA penalties under Labor Code § 226 without having to show injury or willfulness. *See Jimenez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (“requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of Section 226(a)”).

Labor Code section 226.3 provides in relevant part: “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

As a result of Employer’s failure to furnish Ms. Alvarez and other aggrieved employees timely, accurate, and complete wage statements in accordance with Labor Code § 226, subdivision (a), Ms. Alvarez and other aggrieved employee may recover Labor Code § 226.3 penalties under PAGA for in lieu of the normal penalties provided for in Labor Code § 226.

Waiting Time Penalties

In California, public policy favors the full and prompt payment of wages due an employee. Labor Code sections 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Employer failed to timely pay Ms. Alvarez, and on information and belief, other aggrieved employees, all of their final wages at the time of their separation, which final pay was to include, but did not include, all wages and premiums for noncompliant meal periods and rest breaks. Employer’s failure to pay all final wages due to Ms. Alvarez and aggrieved employees was willful and thus entitles aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Employer failed to pay their final wages after separation, up to a maximum of thirty (30) days.

Failure to Maintain Accurate Records

Despite its record-keeping obligations, and based on among other things, the above-described policies and practices, Employer failed to maintain accurate records on behalf of Ms. Alvarez and, on information and belief, all other aggrieved employees. LABOR CODE § 1174.

As an “aggrieved employee” Ms. Alvarez intends to initiate a civil action on behalf of herself and all other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations described above.

Based on information and belief and investigation to date, Employer has committed the following alleged Labor Code violations:

1. Labor Code §§ 226.7, 512, and 558 by failing to provide Ms. Alvarez and all other aggrieved employees with all lawful, timely, uninterrupted, and duty-free meal periods;
2. Labor Code §§ 226.7, 516, and 558 by failing to provide Ms. Alvarez and all other aggrieved employees with all lawful, timely, uninterrupted, and duty-free rest periods;
3. Labor Code §§ 226 and 226.3 by failing to furnish Ms. Alvarez and all other aggrieved employees with timely, accurate and compliant itemized wage statements;

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4. Labor Code §§ 201-203 by failing to timely pay all final wages due to Ms. Alvarez and all other aggrieved employees upon their separation of employment;
5. Labor Code § 204 by failing to pay Ms. Alvarez and all other aggrieved employees all wages earned at least twice during each calendar month;
6. Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Ms. Alvarez and all other aggrieved employees; and
7. Labor Code sections 1400 et seq. by failing to comply with notice provisions of the Cal. Warn Act.

Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please notify us within 65 calendar days of the postmark date of this Notice whether the LWDA intends to investigate these alleged violations.

This Notice sets forth the basis of Ms. Alvarez's grievances, rights, and remedies under the Labor Code and the PAGA. We appreciate your attention to this matter.

Please do not hesitate to contact us if you require any additional information.

Very truly yours,
NORTH LAW P.C.



Hengameh S. Safaei

Cc:

Jackie E. Smith II, Agent for Service of Process, Quail H Farms LLC, 1800 Youd Road
Winton, CA 95388 (via certified mail)

Lisa Blanco Jimenez, Esq. (via email)

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SECOND AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT