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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Veronica Navarro, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

GUTIERREZ, MARCIANO JIMENEZ, an
individual, on behalf of himself and all others
similarly situated;

Plaintiff,

v.

ALTMAN SPECIALTY PLANTS, LLC., a
California limited liability company; and
DOES 1 through 10, inclusive;

Defendants.

CASE NO.: 37-2023-00051361-CU-OE-NC

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages [Labor Code §§ 1194, 1194.2, 1197.1];
2. Failure to Pay Overtime [Labor Code §§ 510, 1194, 1198];
3. Failure to Provide Meal Periods [Labor Code §§ 226.7, 512]
4. Failure to Provide Rest Periods [Labor Code § 226.7]
5. Failure to Provide Recovery Periods [Labor Code § 226.7]
6. Waiting Time Penalties [Labor Code §§ 201-203]
7. Failure to Provide Accurate Wage Statements [Labor Code § 226(a)]
8. Failure to Reimburse Business Expenses [Labor Code § 2802]
9. Unlawful Competition/Unlawful Business Practices [Bus. & Prof. Code § 17200 et seq.]; and,
10. Violations of the Private Attorneys General Act [Labor Code § 2698 et seq.]

JURY TRIAL DEMANDED

1 Plaintiff MARCIANO JIMENEZ GUTIERREZ on behalf of himself and all others similarly
2 situated, hereby alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this action as a Class Action pursuant to California Code of Civil
5 Procedure section 382 on behalf of himself and other current and former non-exempt employees of
6 Defendant ALTMAN SPECIAL PLANTS, LLS, and DOES 1 through 10, inclusive (collectively
7 “Defendants”). This action arises from Defendants’ unlawful employment practices, including
8 failing to pay minimum wages and overtime for all hours worked, failing to provide compliant meal
9 and rest periods, failing to pay overtime, meal and rest period premiums, and sick pay at the correct
10 rates, failing to reimburse business expenses, failing to timely pay all wages upon separation of
11 employment, and failing to provide accurate wages statements.

12 2. All allegations in this Complaint are based upon information and belief except those
13 allegations specifically pertaining to Plaintiff and/or his counsel, which are based upon personal
14 knowledge. Each allegation in this Complaint has evidentiary support and/or is likely to have
15 evidentiary support after reasonable opportunity for further investigation and formal discovery.

16 3. Defendants have engaged in a systematic pattern of wage and hour abuse towards
17 Plaintiff and other current and former non-exempt employees by denying them specific rights
18 afforded to them under California law, including the California Labor Code and applicable Industrial
19 Welfare Commission (“IWC”) Wage Order.

20 4. At all relevant times, Defendants maintained uniform and consistent policies and
21 practices of:

- 22 a. failing to pay Plaintiff and similarly situated employees minimum wages for
23 all hours worked;
- 24 b. failing to pay Plaintiff and similarly situated employees overtime wages;
- 25 c. failing to provide Plaintiff and similarly situated employees compliant meal
26 periods and to pay meal period premiums at the correct rates;
- 27 d. failing to provide Plaintiff and similarly situated employees compliant rest
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- 1 periods and to pay rest period premiums at the correct rates;
- 2 e. failing to provide Plaintiff and similarly situated employees compliant
- 3 recovery periods and to pay recovery period premiums;
- 4 f. failing to reimburse Plaintiff and similarly situated employees for business
- 5 expenses, including requiring them to purchase their own water bottles for
- 6 work and use of their personal cellular phones;
- 7 g. failing to timely pay Plaintiff and similarly situated former employees all
- 8 wages that were due and owing upon separation of employment; and,
- 9 h. failing to provide Plaintiff and similarly situated employees with accurate
- 10 wage statements.

11 **JURISDICTION AND VENUE**

12 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of

13 Civil Procedure 395(a). Defendants conduct business in this County, maintain offices, transact

14 business, and/or have an agent in this County. Defendants employed Plaintiff and similarly

15 situated employees, and committed the unlawful activities subject to this Complaint, in this

16 County.

17 **THE PARTIES**

18 6. Plaintiff is, and at all relevant times, was a resident of San Diego County, California.

19 Plaintiff was employed by Defendants as non-exempt hourly employee from January 2014 - August

20 2023. Plaintiff was primarily responsible for irrigating plants.

21 7. Defendant ALTMAN SPECIALTY PLANTS, LLC, is a California limited liability

22 company, that operates a large nursery located at 3742 Blue Bird Canyon Rd, Vista, CA 92084.

23 8. The true names and capacities of Defendants sued herein as DOES 1-10, inclusive,

24 are currently unknown to Plaintiff, who therefore sues them by such fictitious names under Code of

25 Civil Procedure section 474. Plaintiff is informed and believes that each of the Defendants

26 designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff

27 will seek leave of court to amend this Complaint to reflect the true names and capacities of

Defendants designated as DOES when those identities become known.

9. At all relevant times, each Defendant acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venturer of the other Defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture. Each of the Defendant's acts alleged herein was done with the permission and consent of each of the other Defendants.

CLASS ACTION ALLEGATIONS

10. Plaintiff brings this action on behalf of himself, and all others similarly situated as a Class Action pursuant to Code of Civil Procedure section 382. The Class that Plaintiff seeks to represent is defined as: All non-exempt employees who were employed by Defendants in the State of California at any time in the four-year period preceding the filing of this Complaint.

11. Plaintiff reserves the right under California Rules of Court, Rule 3.765(b) to amend or modify the class definition with greater specificity or to further divide the Class into subclasses.

12. Defendants have engaged in the same unlawful acts and omissions described herein with respect to each member of the Class during the Class Period.

13. This action may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest among many persons, and it is impractical to bring individual suits before this Court.

14. **Ascertainable Class:** The potential members of the Class are ascertainable because they can be identified and located using Defendants' payroll and personnel records.

15. **Numerosity:** The potential members of the Class are so numerous that joining all members would be impractical and unfeasible. The disposition of their claims in a single lawsuit will benefit both the parties and the Court. The number of Class members is unknown to Plaintiff, who is informed and believes that the Class exceeds fifty individuals.

16. **Typicality:** The claims of Plaintiff are typical of the claims of Class members, because Plaintiff and Class members were subjected to the same violations of the Labor Code and applicable IWC Wage Order committed by Defendants, and they sustained similar injuries and

1 damages arising out of Defendants' common policies and practices.

2 17. **Adequacy:** Plaintiff is an adequate representative of the Class, will fairly protect
3 the interest of Class members, has no interests antagonistic to the members of the Class, and will
4 vigorously pursue the suit. Plaintiff's attorney is competent, skilled and experienced in litigating
5 employment law class actions.

6 18. **Superiority:** Class action is superior to other available means for the fair and
7 efficient adjudication of this controversy. Individual joinder of all Class members is not
8 practicable or feasible, and questions of law and fact common to the Class predominate over
9 questions affecting only individual Class members. All Class members have been damaged by the
10 unlawful policies and practices discussed herein. A class action will allow the Class members to
11 determine the legality of these uniform policies and practices in a single lawsuit, which is the most
12 efficient and economical process for the Court and the parties.

13 19. The predominating common questions or law in fact include:

- 14 a. whether Defendants paid Class members minimum wages for all hours
15 worked;
- 16 b. whether Defendants paid Class members overtime for all overtime hours
17 worked;
- 18 c. whether Defendants provided Class members with compliant meal periods;
- 19 d. whether Defendants provided Class members with compliant rest periods;
- 20 e. whether Defendants provided Class members with compliant recovery
21 periods;
- 22 f. whether Defendants reimbursed Class members for all necessary business
23 expenses, including for water bottles and use of their personal cellular phones;
- 24 g. whether Defendants timely paid Class members who are former employees
25 all wages upon separation of employment;
- 26 h. whether Defendants provided Class members with accurate itemized wage
27 statements; and,

1 i. whether Defendants engaged in unfair competition.

2 20. All of the acts and omissions committed by Defendants as alleged herein were
3 intentional and willful because Defendants were advised by counsel as to these unlawful practices
4 and there is no good faith dispute concerning the validity of these practices.

5 **CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**
7 **(Failure to Pay Minimum Wages for All Hours Worked)**
8 **[Plaintiff and Class Against Defendants]**

9 21. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

10 22. California Labor Code section 1194 provides that “[n]otwithstanding any
11 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or
12 the legal overtime compensation applicable to the employee is entitled to recover in a civil action
13 the unpaid balance of the full amount of this minimum wage or overtime compensation, including
14 interest thereon, reasonable attorney’s fees, and costs of suit.”

15 23. California Labor Code section 1197.1 provides in relevant part that “[i]n any action
16 under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less
17 than the minimum wage fixed by an order of the commission or by statute, an employee shall be
18 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
19 interest thereon.”

20 24. Defendants failed to pay Plaintiff and Class members minimum wages for all hours
21 worked. Among other things, Defendants failed to pay Plaintiff and Class members for time spent
22 working during auto-deducted meal periods. Defendants further engaged in time-shaving or a non-
23 neutral rounding of the hours worked.

24 25. As a result, Plaintiff and the Class have been damages and have not been paid
25 minimum wages for all hours they worked.

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SECOND CAUSE OF ACTION
(Failure to Pay Overtime)
[Plaintiff and Class Against Defendants]

26. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

27. California Labor Code section 510(a) provides in relevant part that “[e]ight hours of labor constitutes a day’s work. 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. 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. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

28. California Labor Code section 1198 provides that “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

29. The applicable IWC Wage Order, Section 3(A) requires employers to pay non-exempt employees (1) one and one half times the employee’s regular rate of pay for all hours worked in excess of eight hours up to and including twelve hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek, and (2) double the employee’s regular rate of pay for all hours worked in excess of twelve hours in any workday and for all hours worked in excess of eight hours on the seventh consecutive day of work in a workweek.

30. Defendants failed to pay Plaintiff and Class members overtime for all overtime hours worked, including time spent working during auto-deducted meal periods or due to time-shaving/non-neutral rounding.

31. Defendants also failed to pay Plaintiff and the Class Members overtime pay at the correct rates by failing to include all forms of non-discretionary pay into their regular rates,

1 including payments for “RestRateSuppl” and “Retroactive.”

2 32. As a result, Plaintiff and the Class have been injured and have not been paid
3 overtime and/or have not been paid the correct overtime rates for all of the overtime hours that
4 they worked.

5 **THIRD CAUSE OF ACTION**
6 **(Failure to Provide Meal Periods)**
7 **[Plaintiff and Class Against Defendants]**

8 33. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

9 34. Labor Code section 512(a) provides “[a]n employer shall not employ an employee
10 for a work period of more than five hours per day without providing the employee with a meal
11 period of not less than 30 minutes, except that if the total work period per day of the employee is
12 no more than six hours, the meal period may be waived by mutual consent of both the employer
13 and employee. An employer shall not employ an employee for a work period of more than 10
14 hours per day without providing the employee with a second meal period of not less than 30
15 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
16 may be waived by mutual consent of the employer and the employee only if the first meal period
was not waived.”

17 35. The applicable IWC Wage Order, section 11(A) similarly provides that “[n]o
18 employer shall employ any person for a work period of more than five (5) hours without a meal
19 period of not less than 30 minutes, except that when a work period of not more than six (6) hours
20 will complete the day’s work the meal period may be waived by mutual consent of the employer
21 and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the
22 meal period shall be considered an “on duty” meal period and counted as time worked. An “on
23 duty” meal period shall be permitted only when the nature of the work prevents an employee from
24 being relieved of all duty and when by written agreement between the parties an on-the- job paid
25 meal period is agreed to. The written agreement shall state that the employee may, in writing,
26 revoke the agreement at any time.”

27 36. The applicable IWC Wage Order, section 11(B) provides that “[i]f an employer
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1 fails to provide an employee a meal period in accordance with the applicable provisions of this
2 order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
3 compensation for each workday that the meal period is not provided."

4 37. Labor Code section 226.7(a) provides that "[n]o employer shall require any
5 employee to work during any meal or rest period mandated by an applicable order of the Industrial
6 Welfare Commission."

7 38. Labor Code section 226.7(b) provides that "[i]f an employer fails to provide an
8 employee a meal period or rest period in accordance with an applicable order of the Industrial
9 Welfare Commission, the employer shall pay the employee one additional hour of pay at the
10 employee's regular rate of compensation for each work day that the meal or rest period is not
11 provided."

12 39. Defendants failed to provide Plaintiff and Class members with an opportunity to take
13 compliant meal periods. Plaintiff and the Class members routinely received late, shortened,
14 interrupted or no meal periods.

15 40. Defendants did not pay Plaintiff and Class Members premium pay for all of these
16 non-compliant meal periods. When Defendants paid meal period premiums, they did so at the
17 wrong rates by failing to add all forms of non-discretionary pay into the regular rates, including
18 payments for "RestRateSuppl" and "Retroactive."

19 41. As a result, Plaintiff and Class members were injured and did not receive all of the
20 meal period premium pay to which they are entitled.

21 **FOURTH CAUSE OF ACTION**
22 **(Failure to Provide Rest Periods)**
23 **[Plaintiff and Class Against Defendants]**

24 42. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

25 43. The applicable IWC Wage Order section 12(A) provides that "[e]very employer
26 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
27 in the middle of each work period. The authorized rest period time shall be based on the total
28 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction

1 thereof. However, a rest period need not be authorized for employees whose total daily work time
2 is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours
3 worked for which there shall be no deduction from wages.”

4 44. The applicable IWC Wage Order section 12(B) provides that “[i]f an employer fails
5 to provide an employee a rest period in accordance with the applicable provisions of this order, the
6 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
7 compensation for each workday that the rest period is not provided.”

8 45. Labor Code section 226.7(a) provides that “[n]o employer shall require any
9 employee to work during any meal or rest period mandated by an applicable order of the Industrial
10 Welfare Commission.”

11 46. Labor Code section 226.7(b) provides that “[i]f an employer fails to provide an
12 employee a meal period or rest period in accordance with an applicable order of the Industrial
13 Welfare Commission, the employer shall pay the employee one additional hour of pay at the
14 employee s regular rate of compensation for each work day that the meal or rest period is not
15 provided.”

16 47. Defendants failed to provide Plaintiff and Class members with an opportunity to
17 take compliant rest periods. Plaintiff and the Class members routinely received shortened,
18 interrupted or no rest periods.

19 48. Defendants did not pay Plaintiff and Class members premium pay for all of these
20 non-compliant rest periods. When Defendants paid meal period premiums, they did so at the
21 wrong rates by failing to all forms of non-discretionary pay into the regular rates, including
22 payments for “RestRateSuppl” and “Retroactive.”

23 49. As a result, Plaintiff and Class members have been injured and did not receive all
24 of the rest period premium pay to which they are entitled.

25 **FIFTH CAUSE OF ACTION**
26 **(Failure to Provide Recovery Periods)**
27 **[Plaintiff and Class Against Defendants]**

28 50. Plaintiff incorporates the preceding paragraphs of the Complaint.

1 51. Under California Law, employers in the agricultural industry must allow and
2 encourage employees to take a preventive cool-down in the rest in the shade when they feel they
3 need to protect themselves. When temperatures reach 95 degrees Fahrenheit or above, the
4 employer shall ensure that the employee takes a minimum ten-minute net preventative cool-down
5 rest period every two hours. (8 C.C.R. § 3395.) Any employer shall not require any employee to
6 work through a recovery period (Labor Code 226.7(b).) Where an employer fails to provide an
7 employee with a recovery period, the employer shall pay the employee one hour of pay at the
8 employee's regular rate of compensation. (Labor Code 226.7(c).)

9 52. Defendants are in the agricultural industry.

10 53. Defendants failed to provide Plaintiff and the Class members with compliant
11 recovery periods. Among other things, Defendants did not provide Plaintiff and the Class
12 members with ten-minute net cool-down rest period every two hours when the temperature
13 exceeded 95 degree Fahrenheit.

14 54. Defendants did not pay Plaintiff and the Class members premium pay for these
15 non-complaint rest periods.

16 55. As a result, Plaintiff and Class members have been injured and did not receive all
17 of the recovery period premium pay to which they are entitled.

18 **SIXTH CAUSE OF ACTION**
19 **(Waiting Time Penalties)**
 [Plaintiff and Class Against Defendants]

20 56. Plaintiff incorporates the preceding paragraphs of the Complaint.

21 57. California Labor Code section 201(a) provides in relevant part that "if an employer
22 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
23 immediately."

24 58. California Labor Code section 202(a) provides in relevant part that "if an employee
25 not having a written contract for a definite period quits his or her employment, his or her wages
26 shall become due and payable not later than 72 hours thereafter, unless the employee has given 72
27 hours previous notice of his or her intention to quit, in which case the employee is entitled to his

1 or her wages at the time of quitting.”

2 59. California Labor Code section 203(a) provides that where an employer willfully
3 fails to timely pay an employee his or her final wages in compliance with these statutes, the wages
4 of the employee shall continue as a penalty from the due date thereof at the same rate until paid or
5 until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

6 60. Defendants failed to timely pay Plaintiff and Class Members who are former
7 employees all wages that they earned upon separation of employment. Among other things,
8 Defendants failed to pay Plaintiff and Class members for the off-the-clock work, overtime, and
9 meal, rest and recovery period premiums as discussed herein.

10 61. Plaintiff is informed and believes that Defendants acted willfully in failing to
11 timely pay Plaintiff and Class members their final wages as Defendants did so intentionally
12 without any good faith dispute regarding the timing or amount of such final wages.

13 62. As a result, Plaintiff and Class members who are former employee are entitled to
14 recover waiting time penalties pursuant to Labor Code section 203.

15 **SEVENTH CAUSE OF ACTION**
16 **(Failure to Provide Accurate Wage Statements)**
17 **[Plaintiff and Class Against Defendants]**

18 63. Plaintiff incorporates the preceding paragraphs of the Complaint.

19 64. An employer, semimonthly or at the time of each payment of wages, shall furnish
20 to his or her employee, either as a detachable part of the check, draft, or voucher paying the
21 employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized
22 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
23 except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable
24 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
25 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
26 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
27 name of the employee and only the last four digits of his or her social security number or an
28 employee identification number other than a social security number, (8) the name and address of

1 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
2 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
3 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee and, beginning July 1,
5 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay
6 and the total hours worked for each temporary services assignment. (Labor Code § 226(a).)

7 65. During the Class Period, Defendants failed to provide Plaintiff and the Class
8 Members with accurate wage statements in violation of Labor Code section 226(a). Among other
9 things, Employer failed to correctly list the total wages earned, total hours worked, and applicable
10 hourly rates of pay. This was largely due to Defendants' failure to record off-the-clock work as
11 described herein.

12 **EIGHTH CAUSE OF ACTION**
13 **(Failure to Reimburse Business Expenses)**
14 **[Plaintiff and Class Against Defendants]**

15 66. Plaintiff incorporates the preceding paragraphs of the Complaint.

16 67. Labor Code section 2802(a) provides that "[a]n employer shall indemnify his or her
17 employee for all necessary expenditures or losses incurred by the employee in direct consequence
18 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
19 even though unlawful, unless the employee, at the time of obeying the directions, believed them to
20 be unlawful."

21 68. Defendants failed to reimburse Plaintiff and the Class members for business
22 expenses, including use of their personal cellular phones and water bottles they were required to
23 purchase for work

24 69. As a result, Plaintiff and the Class members have suffered damages in amount to be
25 determined at trial.

26 **NINTH CAUSE OF ACTION**
27 **(Unfair Competition)**
28 **[Plaintiff and Class Against Defendants]**

70. Plaintiff incorporates the preceding paragraphs of the Complaint.

71. Defendants' employment acts, omissions and practices discussed herein further constitute unlawful, unfair and/or fraudulent business acts or practices withing of California Business and Professions Code section 17200.

72. As a result of Defendants' unlawful, unfair and/or fraudulent business acts or practices, (1) Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations under the California Labor Code and applicable IWC Wage Orders; and (2) Plaintiff and Class Members have been injured and have lost wages and other compensation as described herein.

73. Accordingly, Plaintiff seeks to enjoin Defendants' unlawful, unfair and/or fraudulent business acts or practices and seeks restitution to restore to her all money which she has been denied.

TENTH CAUSE OF ACTION
(Violation of the Private Attorneys General Act)
[Plaintiff Against Defendants]

74. Plaintiff incorporates the preceding paragraphs of the Complaint.

75. During the PAGA period (one year and sixty-five days from the filing of this First Amended Complaint), Defendants subjected Plaintiff and similarly situated non-exempt Aggrieved Employees to the foregoing unlawful Labor Code/Wage Order practices as discussed herein.

76. In addition, Defendants failed to maintain accurate time and payroll records for Plaintiff and Aggrieved Employees during the PAGA period. Under California law, an employer must maintain accurate time and pay records, including (1) time records showing when employees begin and ends each work periods, meal periods, split shift intervals, and total hours worked, and (2) pay records showing its employees' hours worked and applicable rates of pay during each pay period. (Labor Code § 1174 and IWC Wage Orders § 7). Defendants failed to maintain these records, including accurate time records showing when Plaintiff and the Aggrieved Employees began and ended their meal periods and workdays. Defendants are therefore subject to civil penalties.

77. Labor Code section 204 requires an employer to pay all wages that are due and owing to employees twice during each calendar month on days designated in advance by the employer as regular paydays. Defendants violated this statute by failing to pay Plaintiff and Aggrieved Employees all wages that are due and owing during their employment, including wages for all hours worked, overtime, and meal and rest period premiums. Defendants are therefore subject to civil penalties.

78. Labor Code section 246 requires California employers to provide their employee with paid sick leave, to accrue and pay sick leave at certain rates, and to provide written notice to employees on their wage statement or in a separate writing the amount of available sick leave. Defendants violated this statute by failing to (a) provide Plaintiff and the Aggrieved Employees all sick pay to which they were entitled, (b) to accrue sick pay for them at the correct rates, (c) to pay them sick pay at the correct rates; and (d) to provide the required written notice. Accordingly, Plaintiff and the Aggrieved Employees are entitled to civil penalties under Labor Code section 248.5 or 2699.

79. In sum, during the PAGA period, Defendants violated the Labor Code and Wage Order sections referenced herein, including Labor Code sections 201-203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and the applicable Wage Order, Sections 3, 4, 7, 11, 12, and 20. These violations subject Defendants to civil penalties as set forth in, *inter alia*, Labor Code section 2699.

80. Under Labor Code section 2699.3, the LWDA must give written notice to the parties it intends to investigate the alleged violations within 60 days of the date of the Plaintiff's written notice.

81. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections 2699.3 and 2699.5 by letter dated November 13, 2023. Plaintiff gave written notice to the LWDA via electronic submission, and via certified mail to all Defendants, of the specific provisions of the Labor Code and applicable Wage Order allegedly violated, including the facts and theories to support the alleged violations.

82. As of the filing of this complaint, the LWDA has not provided the parties with any notice of its intention to investigate these claims.

83. Under Labor Code section 2699.3, Defendants has 33 days after the date of written notice to cure the alleged violations. As of the filing of this complaint, Defendant has not responded to Plaintiff's PAGA notice in an attempt to cure.

84. Plaintiff seeks civil penalties in the amounts set forth in the Labor Code for each of the aforesaid violations and/or default penalties as provided by Labor Code section 2699.

85. Under Labor Code section 2699(g), Plaintiff is also entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief on behalf of herself and the Class members as follows:

- (1) for an order that this lawsuit be certified as a class action;
- (2) for an order that Plaintiff be appointed the class representative;
- (3) for an order that undersigned counsel for Plaintiff be appointed class counsel;
- (4) for compensatory damages according to proof;
- (5) for liquidated damages according to proof;
- (6) for statutory and other available penalties according to proof;
- (7) for an order requiring Defendants to make restitution of all amount wrongfully withheld from Plaintiff and the Class as a result of Defendant's unlawful, unfair or fraudulent employment acts and practices;
- (8) for an order enjoining Defendants from further engaging in their unlawful, unfair or fraudulent employment acts and practices;
- (9) for civil penalties;
- (10) for prejudgment interest as permitted by laws;
- (11) for attorney's fees and costs incurred in prosecuting this action; and,

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(12) for such further relief that the Court deems appropriate.

Dated: January 22, 2023

BLAKE JONES LAW, PC.

By: 
Blake R. Jones
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on claims where a jury is allowed.

Dated: January 22, 2023

BLAKE JONES LAW, PC.

By: 
Blake R. Jones
Attorneys for Plaintiff