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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Raquel Enriquez, Deputy
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*Attorneys for Plaintiff Rafael Silva-Garcia,
Aggrieved Employee of Defendants,
on Behalf of the State of California's
Labor and Workforce Development Agency
for All Aggrieved Employees of Defendants*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS**

RAFAEL SILVA-GARCIA, Aggrieved
Employee of Defendants, on Behalf of the
State of California's Labor and Workforce
Development Agency for All Aggrieved
Employees of Defendants,

Plaintiff,

v.

GEMPERLE EGG PACKING CO. INC., a
California Corporation; GEMPERLE
ENTERPRISES, an unknown business entity;
GEMPERLE FAMILY FARMS, an unknown
business entity; and DOES 1-100, Inclusive,

Defendants.

Case No. CV-24-000524

REPRESENTATIVE ACTION

COMPLAINT FOR:

**VIOLATION OF CALIFORNIA'S LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB.
CODE 2698, ET SEQ.)**

DEMAND FOR JURY TRIAL

Freeland, John D

This case has been assigned to Judge _____
Dept. 23
Department _____, for all purposes including Trial.

1 Plaintiff RAFAEL SILVA-GARCIA (hereinafter, “Plaintiff”), who is an aggrieved
2 employee of Defendants GEMPERLE EGG PACKING CO. INC, GEMPERLE ENTERPRISES,
3 GEMPERLE FAMILY FARMS, and DOES 1 through 100, inclusive, (collectively,
4 “Defendants”), brings this representative action as proxy for the State of California’s Labor and
5 Workforce Development Agency (“LWDA”) on behalf of all current and former aggrieved
6 employees of Defendants in California, and hereby alleges the following facts and claims against
7 Defendants, and respectfully request civil penalties, all other available relief, and a trial by jury of
8 all issues and causes of action so triable.

9 INTRODUCTION

10 1. Plaintiff brings this representative action as the proxy for the State of California’s
11 LWDA against Defendants for civil penalties pursuant to California’s Private Attorneys General
12 Act of 2004 (hereinafter, the “PAGA”), Labor Code section 2698, *et seq.*, resulting from
13 Defendants’ violations of “wage and hour” laws protective of Defendants’ aggrieved employees
14 under the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders.
15 The PAGA permits an aggrieved employee to bring a representative action as the State’s
16 designated proxy on behalf of himself and all other current and former non-exempt aggrieved
17 employees of an employer to recover civil penalties for violation of California’s Labor Code.

18 2. Defendants’ systematic pattern of Labor Code and IWC Wage Order violations
19 toward Plaintiff and other current and former aggrieved employees include, but are not limited to:

- 20 a. Failure to compensate for all hours worked in violation of Labor Code
21 sections 204, 1194, 1197, and 1198;
- 22 b. Failure to pay all overtime wages owed for time worked in violation of
23 Labor Code section 510;
- 24 c. Failure to provide payment for sick leave in violation of Labor Code
25 sections 246, 248.2, 248.5;
- 26 d. Failure to pay all accrued vacation time in violation of Labor Code section
27 227.3;
- 28 e. Failure to furnish accurate itemized wage statements in violation of Labor

1 Code section 226(a); and

2 f. Failure to timely pay all final wages owed upon separation of employment
3 in violation of Labor Code sections 201, 202, and 203.

4 **PARTIES**

5 3. Plaintiff RAFAEL SILVA-GARCIA is an individual over the age of eighteen (18).
6 Plaintiff is and, at all relevant times mentioned in this Complaint, was a California citizen residing
7 within Merced County, California. Plaintiff was employed by Defendants in California as an
8 hourly paid, non-exempt employee from approximately July 21, 2022 to February 17, 2023 at
9 Defendants' facilities in Turlock, California. At all relevant times herein, Plaintiff was an
10 "employee" as that term is used in the Labor Code. During the applicable statutory period,
11 Plaintiff was subject to various policies, procedures, and practices implemented by Defendants
12 that, as alleged herein, were and are in violation of the Labor Code.

13 4. Defendant GEMPERLE EGG PACKING CO. INC. is and at all relevant times
14 herein was a California corporation, having their principal place of business at 10218 Lander
15 Avenue, Turlock, California 95380, and are the owners and operators of an industry, business
16 and/or facility licensed to do business and actually doing business in the State of California as a
17 farm and leading producer of organic and cage free eggs.¹ Defendant GEMPERLE EGG
18 PACKING CO. INC. is an "employer" as the term is used in the Labor Code and IWC Wage
19 Orders.

20 5. Defendant GEMPERLE ENTERPRISES. is and at all relevant times herein was an
21 unknown business entity, having its principal place of business at 10218 Lander Avenue, Turlock,
22 California 95380, and is the owner and operator of an industry, business and/or facility licensed to
23 do business and actually doing business in the State of California as a farm and leading producer
24 of organic and cage free eggs. Defendant GEMPERLE ENTERPRISES. is an "employer" as the
25 term is used in the Labor Code and IWC Wage Orders.

26 6. Defendant GEMPERLE FAMILY FARMS. is and at all relevant times herein was
27

28 ¹ See, Gemperle Family Farms, <https://gemperle.com/history/> (last visited January 9, 2024)

1 an unknown business entity, having its principal place of business at 10218 Lander Avenue,
2 Turlock, California 95380, and is the owner and operator of an industry, business and/or facility
3 licensed to do business and actually doing business in the State of California as a farm and leading
4 producer of organic and cage free eggs. Defendant GEMPERLE FAMILY FARMS. is an
5 “employer” as the term is used in the Labor Code and IWC Wage Orders.

6 7. The Defendants sued by the fictitious names DOES 1 through 100, inclusive, are on
7 information and belief now, and/or at all times mentioned in this Complaint were licensed to do
8 business and/or actually doing business in California, including Stanislaus County, and each of the
9 fictitiously named Defendants are responsible for the conduct alleged in this Complaint. Plaintiff
10 does not know the true names or capacities, whether individual, partner or corporate, of DOES 1
11 through 100, inclusive and for that reason, DOES 1 through 100 are sued under such fictitious
12 names pursuant to California Code of Civil Procedure (“Code of Civil Procedure”) section 474.
13 Plaintiff will seek leave of court to amend this Complaint to allege such names and capacities as soon
14 as they are ascertained.

15 8. Defendants, and each of them, are now and/or at all times mentioned in this
16 Complaint were in some manner legally responsible for the events, happenings and circumstances
17 alleged in this Complaint.

18 9. Defendants, and each of them, proximately subjected Plaintiff to the unlawful
19 practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

20 10. Defendants, and each of them, are now and/or at all times mentioned herein were
21 the agents, servants and/or employees of some or all other Defendants, or vice-versa, and in doing
22 the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this
23 Complaint were acting within the course and scope of that agency, servitude and/or employment.

24 11. Defendants, and each of them, are now and/or at all times mentioned in this
25 Complaint were members of and/or engaged in a joint venture, partnership and common
26 enterprise, and were acting within the course and scope of, and in pursuance of said joint venture,
27 partnership and common enterprise.

28 12. Defendants, and each of them, at all times mentioned in this Complaint concurred

1 and contributed to the various acts and omissions of each and every one of the other Defendants in
2 proximately causing the complaints, injuries and/or damages alleged in this Complaint.

3 13. Defendants, and each of them, at all times mentioned in this Complaint approved
4 of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in
5 this Complaint.

6 14. Defendants, and each of them, at all times mentioned in this Complaint aided and
7 abetted the acts and omissions of each and every one of the other Defendants thereby proximately
8 causing the damages alleged in this Complaint.

9 **JURISDICTION AND VENUE**

10 15. The California Superior Court has jurisdiction in this matter pursuant to California
11 Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all
12 causes except those given by statute to other trial courts.” The statutes under which this action is
13 brought do not specify any other specific basis for jurisdiction.

14 16. The California Superior Court also has jurisdiction in this matter because both the
15 individual and aggregate monetary damages and restitution sought herein exceed the minimal
16 jurisdictional limits of the Superior Court and will be established at trial, according to proof.

17 17. The California Superior Court also has jurisdiction over Defendants because they
18 are corporations and/or entities and/or persons with sufficient minimum contacts in California, are
19 citizens of California, or otherwise intentionally availed themselves of the California market so as
20 to render the exercise of jurisdiction over them by the California courts consistent with traditional
21 notions of fair play and substantial justice. There is no federal question at issue as the issues herein
22 are based solely on California statutes and law, including the Labor Code. Thus, this Court
23 maintains appropriate jurisdiction to hear this matter.

24 18. Venue is proper in the Superior Court of California for the County of Stanislaus,
25 pursuant to Code of Civil Procedure section 395(a) and Code of Civil Procedure section 395.5 in
26 that liability arose in Stanislaus County because at least some of the acts and omissions that are the
27 subject matter of this Complaint occurred therein and/or each Defendant either is found, maintains
28 offices, transacts business, exists, and/or has an agent in Stanislaus County.

1 **FACTUAL ALLEGATIONS**

2 19. During the applicable statutory period, Defendants employed Plaintiff as an hourly
3 paid, non-exempt employee from approximately July 21, 2022 to February 17, 2023.

4 20. During the relevant statutory period, Defendants further failed to compensate
5 Plaintiff for all overtime hours worked based upon the appropriate regular rate of pay by not
6 taking into account all remuneration paid, including non-discretionary bonuses earned by Plaintiff.

7 21. During the relevant statutory period, Defendants failed to compensate Plaintiff for
8 all vested sick time earned at the correct accrual rates in accordance with his employment
9 contracts and/or Defendants' policies when he sought sick leave.

10 22. During the relevant statutory period, Defendants failed to properly compensate
11 Plaintiff for all vested vacation time earned at the correct accrual rates. For example, Defendants
12 did not accrue vacation pay for the hours worked in Plaintiff's final pay period (02/12/2023-
13 02/17/2023).

14 23. During the relevant statutory period, Defendants failed to provide Plaintiff with
15 accurate itemized wage statements. For example, Plaintiff was furnished with wage statements that
16 show the incorrect total hours worked by Plaintiff. Additionally, as a result of alleged violations
17 discussed above, Defendants furnished wage statements that failed to correctly show, among other
18 items: (1) the gross wages earned, (2) all deductions, and (3) net wages earned.

19 24. During the relevant statutory period, Defendants willfully failed to pay all wages
20 owed to Plaintiff upon separation of employment. Defendants still have yet to pay Plaintiff all
21 final wages owed to him due to their failure to pay Plaintiff for all overtime compensation, sick
22 pay, and vacation pay.

23 **GENERAL ALLEGATIONS**

24 25. Plaintiff and all other aggrieved employees are current and former non-exempt
25 employees of Defendants that work or worked at Defendants' facilities in California as non-
26 exempt employees during the statutory period.

27 26. During the applicable statutory period, Plaintiff and other current and former
28 aggrieved employees were subject to the same various policies, procedures, and practices

1 implemented by Defendants that, as alleged herein, were and are in violation of the Labor Code.

2 27. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy
3 and/or practice, Defendants failed to pay Plaintiff and all other aggrieved employees for all
4 overtime compensation based upon the regular rate of pay by not taking into account all
5 renumeration paid, including non-discretionary bonuses.

6 28. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy
7 and/or practice, Defendants failed and fail to compensate Plaintiff and all other aggrieved
8 employees all vested sick time earned at the correct accrual rates in accordance with their
9 employment contracts and/or Defendants' policies when they sought sick leave.

10 29. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy
11 and/or practice, Defendants failed to compensate Plaintiff and all other aggrieved employees all
12 vested vacation time earned at the correct accrual rates.

13 30. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy
14 and/or practice, Defendants, failed to provide Plaintiff and all other aggrieved employees with
15 accurate itemized wage statements because the wage statements show the incorrect total hours
16 worked by Plaintiff and all other aggrieved employees. Additionally, as a result of alleged
17 violations discussed above, Defendants furnished wage statements that failed to correctly show,
18 among other items: (1) the gross wages earned, (2) all deductions, and (3) net wages earned.

19 31. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy
20 and/or practice, Defendants willfully failed to pay all wages owed to Plaintiff and all other
21 aggrieved employees upon separation of employment. Defendants still have yet to pay Plaintiff
22 and all other aggrieved employees all final wages owed to them due to their failure to pay them for
23 all minimum wages, overtime compensation, and Defendants' failure to pay sick pay and vacation
24 pay accrued.

25 **FIRST CAUSE OF ACTION**

26 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

27 **(California Labor Code §§ 2698, *et seq.*)**

28 32. Plaintiff incorporates by reference and realleges each and every one of the

1 allegations contained in the preceding and foregoing paragraphs of this complaint, as though fully
2 set forth herein.

3 33. Pursuant to Labor Code section 2698, *et seq.*, Plaintiff seeks to recover all
4 applicable civil penalties and reasonable attorneys' fees and costs, permitted under PAGA through
5 a representative action on behalf of himself and all other aggrieved employees that work or
6 worked for Defendants during the relevant time period.

7 34. In accordance with *Arias v. Superior Court*, 46 Cal.4th 969 (2009), a representative
8 action is not subject to the formalities required of a class action and class certification of PAGA
9 claims is not required.

10 35. Plaintiff is an "aggrieved employee" within the meaning of Labor Code section
11 2699(c) because he was employed by Defendants during the applicable statutory period and
12 suffered one or more of the Labor Code violations, as alleged herein. Thus, Plaintiff is well suited
13 to represent the interests of all other aggrieved employees in in this PAGA representative action.

14 36. Pursuant to Labor Code section 2699(i), seventy-five percent (75%) of civil
15 penalties recovered by aggrieved employees shall be distributed to the Labor and Workforce
16 Development Agency (hereinafter "LWDA") for enforcement of labor laws and education of
17 employers and employees about their rights and responsibilities under this code, and twenty-five
18 percent (25%) shall be distributed to the aggrieved employees.

19 37. Plaintiff's representative action alleges violations of certain Labor Code sections
20 that are listed within Labor Code section 2699.5. Accordingly, Labor Code section 2699.3(a)
21 applies to this action, and Labor Code section 2699.3(b)-(c) do not apply.

22 38. On November 2, 2023, Plaintiff complied with Labor Code section 2699.3(a) by
23 electronically filing written notice with the LWDA and serving written notice, via certified mail,
24 upon the LWDA and Defendants regarding the specific provisions of the Labor Code alleged to
25 have been violated by Defendants and Plaintiff's intent to pursue civil penalties against
26 Defendants on behalf of himself and all other aggrieved employees pursuant to PAGA. Attached
27 hereto as **Exhibit 1** is a true and correct copy of Plaintiff's notice letter.

28 39. Labor Code section 2699.3(a) provides in pertinent part that: "The agency shall

1 notify the employer and the aggrieved employee or representative by certified mail that it does not
2 intend to investigate the alleged violation within 60 calendar days of the postmark date of the
3 notice received... [u]pon receipt of that notice or if no notice is provided within 65 calendar days
4 of the postmark date of the notice given... the aggrieved employee may commence a civil action
5 pursuant to Section 2699.”

6 40. Well over sixty-five calendar days have passed since Plaintiff served notice upon
7 the LWDA and Defendants, and the LWDA did not provide notice of its intent to investigate
8 Plaintiff’s claims. Accordingly, Plaintiff exhausted his obligation to provide administrative notice
9 and is authorized to commence this representative action seeking civil penalties on behalf of
10 himself and all other aggrieved employees of Defendants.

11 41. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
12 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
13 divisions, commissions, boards, agencies or employees for violation of the code may, as an
14 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
15 himself and other current or former employees pursuant to the procedures specified in Labor Code
16 section 2699.3.

17 42. Pursuant to Labor Code section 2699(f)(2), for all provisions of the Labor Code for
18 which a civil penalty is not specifically provided, there is established a civil penalty that imposes a
19 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
20 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
21 subsequent violation.

22 43. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff, on behalf of himself and
23 aggrieved employees, seeks applicable civil penalties for violations of Labor Code sections 201,
24 202, 203, 204, 226, 227.3, 246, 248.2, 248.5, 510, 1194, 1197, 1198, and 1199 during the statutory
25 period as set forth below:

26 a. For violations of Labor Code section 201, 202, 203, 227.3, 246, 248.2,
27 248.5, 510, 1194, 1197 1198, and 1199, Labor Code section 2699(f)(2) imposes a civil penalty of
28 one hundred dollars (\$100) for each aggrieved employee per pay period for each initial violation

1 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
2 violation;

3 b. For violations of Labor Code section 204, Labor Code section 210 imposes
4 a civil penalty of one hundred dollars (\$100) for each aggrieved employee for each initial violation
5 that was neither willful nor intentional, and two hundred dollars (\$200) for each aggrieved
6 employee, for each subsequent violation, regardless of whether the subsequent violation was
7 willful or intentional;

8 c. Defendants violated Labor Code section 227.3 by failing to pay all
9 aggrieved employees, including Plaintiff, all vested and unused vacation pay earned upon
10 resignation, termination, or other separation of employment. Pursuant to *Suastez v. Plastic Dress-*
11 *Up, Co.* (1982) 31 Cal.3d. 774 and Labor Code section 227.3, a proportionate right to vacation pay
12 vests on a *pro rata* basis as an employee renders labor and vested vacation pay and other similar
13 forms of paid time off are considered wages that cannot be subject to forfeiture without
14 compensation for forfeited days at the applicable rates required by law. Thus, pursuant to Labor
15 Code section 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars (\$100)
16 for each aggrieved employee per pay period for the initial violation, and two hundred dollars
17 (\$200) for each aggrieved employee per pay period for each subsequent violation.

18 d. Defendants violated Labor Code sections 246 and 248 by willfully failing
19 to properly compensate Plaintiff and aggrieved employees for all vested sick time earned at the
20 correct accrual rates in accordance with their employment contracts and/or Defendants' policies
21 when they sought sick leave. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are
22 subject to a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay
23 period for the initial violation of these sections, and two hundred dollars (\$200) for each aggrieved
24 employee per pay period for each subsequent violation.

25 e. Defendants violated Labor Code sections 510, 1194, 1197, 1198, and 1199
26 by not paying Plaintiff and aggrieved employees all wages owed for all hours worked for each pay
27 period as a result of Defendants' policy or practice of failing to pay all overtime compensation
28 based upon the regular rate of pay by not taking into account all remuneration paid, including non-

1 discretionary bonuses, as alleged herein. Thus, pursuant to Labor Code section 2699(f)(2),
2 Defendants are subject to a civil penalty of one hundred dollars (\$100) for each aggrieved
3 employee per pay period for the initial violation, and two hundred dollars (\$200) for each
4 aggrieved employee per pay period for each subsequent violation.

5 f. Defendants violated Labor Code section 226(a) by failing to provide
6 Plaintiff and aggrieved employees with accurate itemized wage statements correctly identifying,
7 among other things, the correct wages earned, the correct amount of net wages earned, and the
8 correct amount of deductions that were paid or should have been paid. Thus, pursuant to Labor
9 Code sections 226.3 and 2699(a), Defendants, in addition to, and entirely independent and apart
10 from any other penalty, are subject to a civil penalty for violation Labor Code section 226(a) in the
11 amount of two hundred and fifty dollars (\$250) per aggrieved employee per violation in an initial
12 citation and one thousand dollars (\$1,000) per aggrieved employee for each violation in a
13 subsequent citation.

14 g. Defendants violated Labor Code sections 201, 202, and 203 by willfully
15 failing to timely pay Plaintiff and aggrieved employees all wages owed upon separation of
16 employment by failing to pay all overtime compensation, and Defendants' failure to vacation and
17 sick pay. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil
18 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
19 violation of these sections, and two hundred dollars (\$200) for each aggrieved employee per pay
20 period for each subsequent violation.

21 44. At all material times, Defendants were Plaintiff and all other aggrieved employees'
22 employers, or persons acting on their behalf, within the meaning of Labor Code section 558, who
23 violated or caused to be violated, a section of Part 2, Chapter 1 of the Labor Code or any provision
24 regulating hours and days of work in the applicable IWC Wage Order and, as such, are subject to
25 civil penalties for each underpaid employee as set forth in Labor Code section 558. The civil
26 penalties provided for under Labor Code section 558 are in addition to any other civil penalty
27 provided by law.

28 45. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil

1 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
2 subsequent violation of Labor Code sections 510 and 1194 for each pay period for which Plaintiff
3 and all other aggrieved employees of Defendants were not paid all wages owed as a result of
4 Defendants' failure to pay wages owed for all overtime, as alleged herein.

5 46. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil
6 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
7 subsequent violation of Labor Code section 226.7 for each pay period for which Plaintiff and all
8 other aggrieved employees of Defendants were not provided with a compliant timely off-duty and
9 uninterrupted thirty minute meal period and/or ten minute long rest periods for every four hours
10 worked, or major fraction thereof, as alleged herein.

11 47. Defendants violated Labor Code section 1198 by failing to comply with the
12 maximum hours of work and the standards conditions of labor fixed by the IWC under the "Hours
13 and Days of Work", and "Record" sections of the applicable IWC Wage Order, by failing to keep
14 and provide accurate records, and failing to timely pay owed wages upon separation of
15 employment, as alleged herein. Thus pursuant to Labor Code section 2699(f)(2), Defendants are
16 subject to a civil penalty in the amount of one hundred dollars (\$100) for each aggrieved employee
17 per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved
18 employee per pay period for each subsequent violation.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 21 1. For all civil penalties authorized by Labor Code section 2698, *et seq.*;
- 22 2. For civil penalties under Labor Code section 226.3 in the amount two hundred fifty
23 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)
24 per aggrieved employee for each subsequent violation;
- 25 3. For civil penalties under Labor Code section 210 in the amount of one hundred
26 dollars (\$100.00) for each aggrieved employee for each initial violation that was neither willful
27 nor intentional, and two hundred dollars (\$200.00) for each aggrieved employee, plus twenty-five
28 percent (25%) of the amount unlawfully withheld from each aggrieved employee, for each

1 subsequent violation, regardless of whether the subsequent violation was willful or intentional;

2 4. For civil penalties under Labor Code section 2699(f), for Labor Code violations
3 without a specific civil penalty, in the amount of one hundred dollars (\$100.00) for each aggrieved
4 employee per pay period for each initial violation and two hundred dollars (\$200.00) for each
5 aggrieved employee per pay period for each subsequent violation;

6 5. For civil penalties under Labor Code section 558, as follows: (1) for an initial
7 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
8 employee was underpaid; (2) for each subsequent violation, one hundred dollars (\$100) for each
9 underpaid employee for each pay period for which the employee was underpaid;

10 6. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
11 section 2699(g)(1), or other applicable laws;

12 7. For pre-judgment and post-judgment interest as provided by law; and

13 8. For such additional relief as this Court may deem just and proper.
14

15 DATED: January 23, 2024

BOUCHER LLP

16
17 By:


18 RAYMOND P. BOUCHER
19 ALEXANDER GAMEZ

20 *Attorneys for Plaintiff Rafael Silva-Garcia,*
21 *Aggrieved Employee of Defendants,*
22 *on Behalf of the State of California's*
23 *Labor and Workforce Development Agency*
24 *for All Aggrieved Employees of Defendants*
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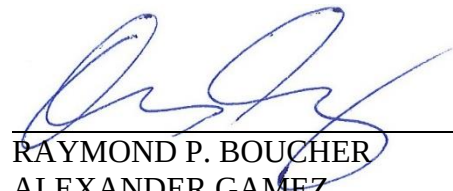
1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a trial by jury of all claims alleged in Plaintiff's Complaint to the
3 fullest extent authorized by law.

4
5 DATED: January 23, 2024

BOUCHER LLP

6
7 By:

8 
RAYMOND P. BOUCHER
ALEXANDER GAMEZ

9
10 *Attorneys for Plaintiff Rafael Silva-Garcia,*
11 *Aggrieved Employee of Defendants,*
12 *on Behalf of the State of California's*
13 *Labor and Workforce Development Agency*
14 *for All Aggrieved Employees of Defendants*
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EXHIBIT 1

BOUCHER LLP

21600 Oxnard Street, Suite 600
Woodland Hills, California 91367

Telephone 818.340.5400
Facsimile 818.340.5401

November 2, 2023

ELECTRONICALLY FILED

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
<https://dir.tfaforms.net/308>

VIA CERTIFIED MAIL

Gemperle Egg Packing Co., Inc.
c/o Agent for Service of Process
Bob Tribsch
300 Palm Street
Turlock, CA 95380

Gemperle Enterprises
c/o Agent for Service of Process
10218 Lander Ave
Turlock, CA 95380

Gemperle Family Farms
c/o Agent for Service of Process
10218 Lander Ave
Turlock, CA 95380

Re: *Silva-Garcia v. Gemperle Egg Packing Co. Inc., et al.*
Notice Regarding Private Attorneys General Act of 2004 Claim

To Whom It May Concern:

Pursuant to section 2699.3 of the California Labor Code Private Attorneys General Act of 2004 (“PAGA” or “the Act”) (Lab. Code § 2698 *et seq.*), this letter shall serve as written notice of claims for civil penalties that will be pursued by Mr. Rafael Silva-Garcia as proxy for the Labor and Workforce Development Agency (“LWDA”) on behalf of all non-exempt aggrieved employees employed by Gemperle Egg Packing Co. Inc., Gemperle Enterprises, and Gemperle Family Farms (collectively, “Gemperle”) in California during the statutory period against Gemperle.

Gemperle is an egg producing company and farm headquartered in Turlock, California. Mr. Silva-Garcia has been employed as a non-exempt employee in California from approximately July 21, 2022 to February 17, 2023. Pursuant to California law, Gemperle has at all relevant times been Mr. Silva-Garcia's employer during the statutory period.

In his representative action, Mr. Silva-Garcia will seek civil penalties pursuant to PAGA as a result of Gemperle's failure to: (1) compensate for all hours worked, including overtime (Lab. Code §§ 204, 510, 1194, 1197, 1198); (2) provide paid sick time payment for sick leave (Lab. Code §§ 246, 248.2, 248.5); (3) pay all accrued vacation time (Lab. Code § 227.3); (4) furnish complete and accurate itemized wage statements (Lab. Code § 226(a)); and (5) timely pay all wages due within the time permitted upon separation of employment (Lab. Code §§ 201-203).

FAILURE TO PAY HOURLY AND OVERTIME WAGES

(Labor Code §§ 204, 510, 1194, 1197, 1198, and 2699)

Labor Code section 204 states that "all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period."

Pursuant to Labor Code section 510, non-exempt employees are entitled to 1.5 times their hourly rate of pay for any work performed in excess of 8 hours in a day or any work performed in excess of 40 hours per week, and twice their regular hourly rate for any work performed past 12 hours in one day or past 8 hours on the seventh consecutive day.

Labor Code section 1194(a) states, "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 1197 states, in pertinent part, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful."

Labor Code section 1198 states, in pertinent part, "The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

In relevant part, Section 2 of the applicable Wage Order states that, "Hours worked means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work."

In relevant part, Section 4 of the applicable Wage Order states that, "Every employer shall pay to each employee, on the established payday for the period involved, not less than the

applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission or otherwise.”

In conjunction, the provisions of the applicable Wage Order and Labor Code require employers to pay non-exempt employees no less than their agreed upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” when the employer knows or reasonably should know that employees are working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

Upon information and belief, during Mr. Silva-Garcia’s employment, Gemperle failed and fails to compensate him and aggrieved employees for all hours worked and overtime hours worked after eight hours in a day and/or after forty hours in a week due to Gemperle’s policy and practice of failing to compensate him and aggrieved employees all overtime compensation based upon the appropriate regular rate of pay by not taking into account all remuneration paid, including non-discretionary performance bonuses earned by Mr. Silva-Garcia and aggrieved employees. For example, in Mr. Silva-Garcia’s 11/27/2022-12/03/2022 pay period, he earned a \$15.00 bonus. However, Gemperle did not take this bonus into consideration when calculating the regular rate of pay for overtime. Gemperle used Mr. Silva-Garcia’s base regular rate of \$15.75 to calculate his overtime rate at \$23.6250 when it should have used an adjusted regular rate of \$16.12 to calculate his overtime rate at \$24.1878. See **Figure 1**.

Figure 1

NO. 1916		SHIFT 1st		PAY PERIOD 11/27/2022 - 12/03/2022		CHECK DATE 12/07/2022		CHECK NO. 118654	
Silva-Garcia, Rafael									
01-Gemperle Bros. ; 12-Chn 1-6 : 100-Regular									

EARNING		Rate	Hr/Unt	Earnings	YTD
SIC				\$0.00	\$63.00
BONUS				\$15.00	\$15.00

EARNING		Rate	Hr/Unt	Earnings	YTD
REG		\$15.7500	40.00	\$630.01	\$10,261.61
OVT		\$23.6250	8.74	\$206.48	\$5,045.64

TAXES		F/S Ex D	Earnings	al	Amount	YTD
Social Security		0	\$851.49		\$52.80	\$953.89
Medicare		0	\$851.49		\$12.35	\$223.09
Fed. Income T		H 0	\$851.49		\$51.77	\$918.75

TAXES		F/S Ex D	Earnings	al	Amount	YTD
State Income 1		H 0	\$851.49		\$10.72	\$183.17
SDI Tax		0	\$851.49		\$9.37	\$169.24

DEDUCTIONS		Current	Arrears Bal.	YTD
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BENEFITS		Current	YTD
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P.T.O.		(Hrs)	Carry Ovr.	Earned	Taken	Available
CPSL			80.00	0.00	0.00	80.00
Sick			24.00	0.00	4.00	20.00
Vacation			0.00	0.00	0.00	0.00

CURRENT		Hours	Earnings	Taxes	Deductions	Net Pay
		48.74	\$851.49	\$137.01	\$0.00	\$714.48
Net Hours		48.74				

BANK ACCOUNT		Deposit Amount
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YTD TD Earnings	YTD Taxes	YTD Deductions	YTD Net Pay
\$15,385.25	\$2,448.14	\$0.00	\$12,937.11

(Labor Code §§ 246, 248.2, 248.5, 2699)

Upon information and belief, Mr. Silva-Garcia and aggrieved employees accrued sick time throughout their employment, but Gemperle failed to properly compensate them for all vested sick time earned at the correct accrual rates in accordance with their employment contracts and/or Gemperle's policies when they sought sick leave. For example, Mr. Silva-Garcia was paid sick pay in his 12/11/2022-12/17/2022 pay period. However, Gemperle did not adjust Mr. Silva-Garcia's "regular rate" by dividing Mr. Silva-Garcia's total wages by his total hours worked in the full pay periods of the prior 90 days of employment (09/18/22). If Gemperle had done the calculation, Mr. Silva-Garcia's sick pay rate should have been \$16.04. Instead, it issued sick pay at his base rate of \$15.75, thereby underpaying him. See **Figure 2**.

Figure 2

NO. 1916		SHIPT 1st		PAY PERIOD 12/11/2022 - 12/17/2022		CHECK DATE 12/21/2022		CHECK NO. 119310	
Silva-Garcia, Rafael 01-Gemperle Bros. : 12-Chn 1-6 : 100-Regular									

EARNING	Rate	Hr/Unt	Earnings	YTD
BONUS			\$0.00	\$140.00
REG	\$15.7500	17.48	\$275.31	\$11,166.92
SIC	\$15.7500	20.00	\$315.00	\$378.00

EARNING	Rate	Hr/Unt	Earnings	YTD
OVT	\$23.6250	6.37	\$150.49	\$5,660.61
DBL	\$31.5000	1.35	\$42.52	\$42.52

TAXES	F/S	Ex D	Earnings	al	Amount	YTD
Social Security	0		\$783.32		\$48.57	\$1,078.06
Medicare	0		\$783.32		\$11.36	\$252.13
Fed. Income T	H	0	\$783.32		\$43.59	\$1,043.27

TAXES	F/S	Ex D	Earnings	al	Amount	YTD
State Income 1	H	0	\$783.32		\$9.22	\$209.76
SDI Tax		0	\$783.32		\$8.62	\$191.28

DEDUCTIONS	Current	Arrears Bal.	YTD

P.T.O.	(Hrs)	Carry Ovr.	Earned	Taken	Available
CPSL			80.00	0.00	80.00
Sick			24.00	0.00	24.00
Vacation			0.00	0.00	0.00

CURRENT	Hours	Earnings	Taxes	Deductions	Net Pay
Worked Hours	45.20	\$783.32	\$121.36	\$0.00	\$661.96

BANK ACCOUNT		Deposit Amount
YTD TD Earnings	YTD Taxes	YTD Deductions
\$17,388.05	\$2,774.50	\$0.00
YTD Net Pay		
\$14,613.55		

Accordingly, Mr. Silva-Garcia, on behalf of aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PAY ALL ACCRUED VACATION TIME

(Labor Code § 227.3)

Labor Code section 227.3 prohibits employers from subjecting vacation pay to unpaid forfeiture and requires an employer who has a policy that provides for vacation pay to pay its terminated employees for all of their vested and unused vacation pay. Pursuant to the California Supreme Court's decision in *Suastez v. Plastic Dress-Up, Co.*, (1982) 31 Cal.3d. 774 and Labor Code section 227.3, vested vacation pay and other similar forms of paid time off earned based on labor performed are considered wages that cannot be subject to forfeiture without compensation for forfeited days at the applicable rates required by law. Furthermore, *Suastez* holds that a proportionate right to vacation pay vests on a pro rata basis as the employee renders labor. *Id.*

Upon information and belief, Mr. Silva-Garcia and aggrieved employees accrued vacation time throughout their employment pursuant to their employment contracts and/or Gemperle's policies, but Gemperle failed to properly compensate them for all vested vacation time earned at the correct accrual rates in accordance with their employment contracts and/or Gemperle's policies in violation of Labor Code section 227.3. For example, Gemperle did not accrue vacation pay for the hours worked in Mr. Silva-Garcia's final pay period (02/12/2023-02/17/2023). Compare **Figures 3 and 4**.

Figure 3

NO. 1916		SHIFT 1st		PAY PERIOD 02/05/2023 - 02/11/2023		CHECK DATE 02/15/2023	CHECK NO. 120826
Silva-Garcia, Rafael							
01-Gemperle Bros. : 12-Chn 1-6 : 100-Regular							

EARNING	Rate	Hr/Unit	Earnings	YTD
REG			\$0.00	\$2,599.23
OVT			\$0.00	\$1,095.31
DBL			\$0.00	\$4.84

TAXES	F/S	Ex D	Earnings	al	Amount	YTD
Social Security	0		\$472.87		\$29.32	\$298.73
Medicare	0		\$472.87		\$6.85	\$69.86
Fed. Income T H	0		\$472.87		\$7.29	\$219.11

DEDUCTIONS	Current	Arrears Bal.	YTD

P.T.O.	(Hrs)	Carry Ovr.	Earned	Taken	Available
Sick		0.00	24.00	24.00	0.00
Vacation		0.00	2.46	0.00	2.46

CURRENT	Hours	Earnings	Taxes	Deductions	Net Pay
	29.28	\$472.87	\$47.72	\$0.00	\$425.15
read Hours	29.28				

EARNING	Rate	Hr/Unit	Earnings	YTD
REG	\$16.1500	5.28	\$85.27	\$731.27
SIC	\$16.1500	24.00	\$387.60	\$387.60

TAXES	F/S	Ex D	Earnings	al	Amount	YTD
State Income T H	0		\$472.87		\$0.00	\$44.69
SDI Tax	0		\$472.87		\$4.26	\$43.37

BENEFITS	Current	YTD

BANK ACCOUNT	Deposit Amount

YTD TD Earnings	YTD Taxes	YTD Deductions	YTD Net Pay
\$4,818.25	\$675.76	\$0.00	\$4,142.49

Figure 4

NO. 1916		SHIFT 1st		PAY PERIOD 02/12/2023 - 02/17/2023		CHECK DATE 02/17/2023	CHECK NO. 120855
Silva-Garcia, Rafael							
01-Gemperle Bros. : 12-Chn 1-6 : 100-Regular							

EARNING	Rate	Hr/Unt	Earnings	YTD
REG			\$0.00	\$2,599.23
OVT			\$0.00	\$769.48
DBL			\$0.00	\$4.84
SIC			\$0.00	\$387.60

EARNING	Rate	Hr/Unt	Earnings	YTD
REG	\$16.1500	28.02	\$452.52	\$1,183.79
VAC	\$16.1500	2.46	\$39.75	\$39.75
OVT	\$24.2250	9.80	\$237.41	\$563.24

TAXES	F/S	Ex	D	Earnings	al	Amount	YTD
Social Security	0			\$729.68		\$45.24	\$343.97
Medicare	0			\$729.68		\$10.58	\$80.44
Fed. Income T.	H	0		\$729.68		\$33.52	\$252.63

TAXES	F/S	Ex	D	Earnings	al	Amount	YTD
State Income T	H	0		\$729.68		\$7.38	\$52.07
SDI Tax	0			\$729.68		\$6.57	\$49.94

DEDUCTIONS		Current	Arrears Bal.	YTD
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BENEFITS		Current	YTD
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P.T.O.	(Hrs)	Carry Ovr.	Earned	Taken	Available
Sick		0.00	24.00	24.00	0.00
Vacation		0.00	2.46	2.46	0.00

CURRENT	Hours	Earnings	Taxes	Deductions	Net Pay
	40.28	\$729.68	\$103.29	\$0.00	\$626.39
Total Hours	40.28				

BANK ACCOUNT		Deposit Amount
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YTD TD Earnings	YTD Taxes	YTD Deductions	YTD Net Pay
\$5,547.93	\$779.05	\$0.00	\$4,768.88

Accordingly, Mr. Silva-Garcia, on behalf of himself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and 2699)

Labor Code section 226(a) requires an employer to provide an employee with an accurate itemized wage statement that shows: (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 pay; (7) the name of the employee and the last four digits of his 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 rate by the employee.

For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty on any employer that violates section 226(a) in the amount of \$250.00 per employee per violation in an initial citation and \$1,000.00 per employee for each subsequent violation. The civil penalties provided for in Labor Code section 226.3 are in addition to any other penalty provided by law.

Mr. Silva-Garcia and aggrieved employees were and continue to be furnished with inaccurate itemized wage statements during the statutory period. For example, Mr. Silva-Garcia was furnished with wage statements that did not properly identify the employer. The wage statements are also inaccurate because they show the incorrect total hours worked by the employees. For example, the wage statements include sick time into the total worked hours. Additionally, as a result of alleged violations discussed above, Gemperle furnished wage statements that failed to correctly show, among other items: (1) the gross wages earned, (2) all deductions, and (3) net wages earned.

Accordingly, Mr. Silva-Garcia on behalf of aggrieved employees, will seek to recover available civil penalties for violations of Labor Code 226(a).

FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, and 2699)

Labor Code section 201 states, in pertinent part, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code section 202 states, in pertinent part, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203 provides that an employee’s wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Upon information and belief, Gemperle willfully failed and fails to provide aggrieved employees all wages due and owed upon separation of employment. By furnishing aggrieved employees with a final check that failed to include all earned and owed minimum wages, overtime, sick pay, and vacation pay – as described above, Gemperle violated Labor Code sections 201 or 202.

Accordingly, Mr. Silva-Garcia on behalf of himself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

**CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE
ORDERS**

(Labor Code § 558)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days in any IWC Wage Order, to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid, and \$100 for each subsequent violation.

As set forth above, Gemperle failed to pay all overtime compensation and provide Mr. Silva-Garcia and aggrieved employees compliant meal periods and/or rest periods and failed to pay premium wages owed. Accordingly, Mr. Silva-Garcia, on behalf of aggrieved employees, will seek to recover civil penalties under Labor Code section 558.

CONCLUSION

The allegations set forth herein are supported by, among other things, records and documents from Mr. Silva-Garcia's employment with Gemperle, including but not limited to earning statements and Mr. Silva-Garcia's confirmation of Gemperle's unlawful practices and policies. As a result of the foregoing violations, Mr. Silva-Garcia is entitled to file a Complaint and invoke the protections of the Act. Mr. Silva-Garcia has placed Gemperle on notice by mailing a certified copy of this notice to their corporate headquarters and/or authorized agents.

Very truly yours,

BOUCHER LLP

By: _____

Alexander Gamez, Esq.

cc via email:
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