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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF SANTA CRUZ

15 ALISHA AGUAYO, as an aggrieved
16 employee pursuant to the Private
17 Attorneys General Act ("PAGA"), on
18 behalf of the State of California and
19 other non-party Aggrieved
20 Employees,

21 Plaintiff,

22 vs.

23 WAWONA FROZEN FOODS, a
24 California corporation; and DOES 1
25 through 10, inclusive,

26 Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
2/13/2024 4:48 PM
Clerk of the Court by Deputy,
Karen Broughton



Case No.: 24CV00449 **24 CECG 04474**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Alisha Aguayo, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA") to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission ("IWC") Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 ("LWDA") in this case on December 4, 2023, until judgment ("non-party Aggrieved
14 Employees"). Plaintiff's share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a "citizen" for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff's share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in the Court, because Defendants employ persons within the
3 County of Santa Cruz, and have violated the requirements of the California Labor Code and
4 applicable Wage Order in this county which give rise to the penalties sought in this action.
5 Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the
6 California Labor Code and applicable Wage Order in at least one location within the County
7 of Santa Cruz, including Defendants' location in Watsonville (1720 Beach Road, Watsonville,
8 California 95076). Pursuant to California Civil Code of Procedure section 393, venue is
9 proper for the recovery of a penalty imposed by statute in the county in which the cause, or
10 some part of the cause, arose. Because Defendants have employees in Santa Cruz County and
11 Plaintiff could bring an action filed under PAGA in any county in which an aggrieved
12 employee worked and Labor Code violations occurred, venue is proper. *Crestwood*
13 *Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

14 5. California Labor Code sections 2698, *et seq.*, the "Labor Code Private
15 Attorneys General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private
16 attorneys general their current or former employers for various civil penalties for violations of
17 various provisions in the California Labor Code.

18 THE PARTIES

19 6. Plaintiff Alisha Aguayo is a resident of Clovis, in Fresno County, California.
20 Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately
21 August 2023 to September 2023. Plaintiff worked as a Production Worker and Seasonal
22 General Labor Worker for Defendants at their facility located in Clovis, California. Plaintiff
23 typically worked eight (8) hours per day or more, and five (5) days per week. At the time
24 Plaintiff's employment with Defendants ended, she was compensated approximately \$15.50
25 per hour. Plaintiff's job duties included, without limitation, inspecting and sorting fruit;
26 mixing, measuring, and pouring ingredients; and cleaning up work areas.

27 7. On information and belief, Defendants required some employees, including
28 Plaintiff, to execute an arbitration agreement at the time of their hire or during their

1 employment. On further information and belief, Defendants' arbitration agreement was and is
2 both procedurally and substantively unconscionable. Specifically, Defendants presented
3 employees with a "Mutual Agreement to Arbitrate Employment Disputes" ("Arbitration
4 Agreement") which had to be reviewed and acknowledged immediately. Specifically, the
5 Arbitration Agreement was one of several documents presented to employees for signature
6 during the orientation process, including Safety Training Acknowledgment, Meal and Rest
7 Period Obligation Acknowledgment, Sick Pay Policy, and Authorization/Opt-In to Receive
8 Text Messages From Wawona Frozen Foods Regarding Work Schedule. Also, employees did
9 not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement.
10 Rather, it was provided to Defendants' employees for them to sign on a take-it or leave-it
11 basis, along with other onboarding documents. Further, Defendants did not set forth in the
12 agreement or otherwise provide employees with the rules which will govern the arbitration,
13 instead forcing employees to seek this information out on their own ("The [California
14 Arbitration Act] is available on the internet or in the Human Resources Office").

15 8. WAWONA FROZEN FOODS was and is, upon information and belief, a
16 California corporation, and at all times hereinafter mentioned, an employer whose employees
17 are engaged throughout this county and the State of California.

18 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
19 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
20 amend the complaint and serve such fictitiously named Defendants once their names and
21 capacities become known.

22 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
23 were the partners, agents, owners, or managers of WAWONA FROZEN FOODS at all
24 relevant times.

25 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
26 acts and omissions alleged herein was performed by, or is attributable to, WAWONA
27 FROZEN FOODS and/or DOES 1 through 10 (collectively, "Defendants" or "WAWONA"),
28 each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert

1 with, each of the other co-Defendants and was acting within the course and scope of such
2 agency, employment, joint venture, or concerted activity with legal authority to act on the
3 others' behalf. The acts of any and all Defendants were in accordance with, and represent, the
4 official policy of Defendants.

5 12. At all relevant times, Defendants, and each of them, ratified each and every act
6 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
7 and abetted the acts and omissions of each and all the other Defendants in proximately causing
8 the damages herein alleged.

9 13. Plaintiff is informed and believes, and thereon alleges, that each of said
10 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
11 omissions, occurrences, and transactions alleged herein.

12 **PAGA REPRESENTATIVE ALLEGATIONS**

13 14. Defendants specialize in the growing and freezing of fresh fruit, and supplying
14 the retail, club store, foodservice, school, and food ingredient industries with their fruit
15 products. Upon information and belief, Defendants maintain a single, centralized Human
16 Resources (HR) department at their corporate headquarters in Clovis, California, for all non-
17 exempt, hourly paid employees working for Defendants in California, which is responsible for
18 the recruiting and hiring of new employees, and communicating and implementing
19 Defendants' company-wide policies, including timekeeping policies and meal and rest period
20 policies, to employees throughout California.

21 15. In particular, Plaintiff and other non-party Aggrieved Employees, on
22 information and belief, received the same standardized documents and/or written policies.
23 Upon information and belief, the usage of standardized documents and/or written policies,
24 including new-hire documents, indicate that Defendants dictated policies at the corporate level
25 and implemented them company-wide, regardless of their employees' assigned locations or
26 positions. Upon information and belief, Defendants set forth uniform policies and procedures
27 in several documents provided at an employee's time of hire.

28 16. Upon information and belief, Defendants maintain a centralized Payroll

1 department at their corporate headquarters in Clovis, California, which processes payroll for
2 all non-exempt, hourly paid employees working for Defendants at their various locations in
3 California, including Plaintiff and other non-party Aggrieved Employees. Based upon
4 information and belief, Defendants issue the same formatted wage statements to all non-
5 exempt, hourly paid employees in California, irrespective of their work locations. Upon
6 information and belief, Defendants process payroll for departing employees in the same
7 manner throughout the State of California, regardless of the manner in which each employee's
8 employment ends.

9 17. Defendants continue to employ non-exempt or hourly paid employees in
10 California.

11 18. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
13 and advisors knowledgeable about California labor and wage law, employment and personnel
14 practices, and about the requirements of California law.

15 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
16 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
17 were not recorded.

18 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 receive certain wages for overtime compensation and that they were not receiving certain
21 wages for overtime compensation.

22 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that other non-party Aggrieved Employees were entitled to be paid at a
24 regular rate of pay, and corresponding rates of pay for overtime wages and/or meal and rest
25 period premiums, that included as eligible income all remuneration required by law, including
26 but not limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or
27 other forms of compensation, but failed to include all forms of remuneration in calculating the
28 regular rate of pay for other non-party Aggrieved Employees.

1 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 receive at least minimum wages for compensation and that they were not receiving at least
4 minimum wages for work that was required to be done off-the-clock. In violation of the
5 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
6 least minimum wages for work done off-the-clock.

7 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
10 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
11 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
12 other non-party Aggrieved Employees were not provided with all meal periods or payment of
13 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
14 uninterrupted, thirty (30) minute meal period.

15 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
18 payment of one (1) additional hour of pay at their regular rates of pay when they were not
19 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
20 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
21 provided with payment of one (1) additional hour of pay at their regular rates of pay when
22 they were not authorized and permitted to take a compliant rest period.

23 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 receive complete and accurate wage statements in accordance with California law. In
26 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
27 were not provided complete and accurate wage statements.

28 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that they had a duty to maintain accurate and complete payroll records in
2 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
3 and intentionally failed to do so.

4 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 timely payment of wages during their employment. In violation of the California Labor Code,
7 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
8 including, but not limited to, overtime wages, minimum wages, meal and rest period
9 premiums, and/or sick leave pay, within permissible time periods.

10 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 timely payment of all wages earned upon termination of employment. In violation of the
13 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
14 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
15 meal and rest period premiums, and/or sick leave pay, within permissible time periods.

16 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that other non-party Aggrieved Employees were entitled to receive sick
18 leave benefits to be paid at a regular rate of pay, that included, as eligible income, all income
19 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation. In
20 violation of the California Labor Code, Defendants failed to include all forms of remuneration
21 in calculating the regular rate of pay for sick leave pay.

22 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
23 mentioned, Defendants knew or should have known that they had a duty to compensate
24 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
25 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
26 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
27 that they were properly denied wages, all in order to increase Defendants' profits.

28 31. At all times herein set forth, PAGA provides that any provision of law under

1 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
2 assessed and collected by the LWDA for violations of the California Labor Code and
3 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
4 civil action brought on behalf of themselves and other current or former employees pursuant
5 to procedures outlined in California Labor Code section 2699.3.

6 32. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
7 person who was employed by the alleged violator and against whom one or more of the
8 alleged violations was committed."

9 33. Plaintiff and other current and former employees of Defendants are "aggrieved
10 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
11 or former employees and one or more of the alleged violations were committed against them.

12 34. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
13 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
14 following requirements have been met:

- 15 (a) The aggrieved employee shall give written notice by online filing
16 (hereinafter "Employee's Notice") to the LWDA and by certified mail
17 to the employer of the specific provisions of the California Labor Code
18 alleged to have been violated, including the facts and theories to support
19 the alleged violations.
- 20 (b) An aggrieved employee's notice filed with the LWDA pursuant to
21 2699.3(a) and any employer response to that notice shall be
22 accompanied by a filing fee of seventy-five dollars (\$75).
- 23 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
24 employer and the aggrieved employee by certified mail that it does not
25 intend to investigate the alleged violation within sixty (60) calendar
26 days of the postmark date of the Employee's Notice. Upon receipt of
27 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
28 five (65) calendar days of the postmark date of the Employee's Notice,

1 the aggrieved employee may commence a civil action pursuant to
2 California Labor Code section 2699 to recover civil penalties in addition
3 to any other penalties to which the employee may be entitled.

4 35. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
5 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
6 provision other than those listed in Section 2699.5 after the following requirements have been
7 met:

8 (a) The aggrieved employee or representative shall give written notice by
9 online filing to the LWDA and by certified mail to the employer of the
10 specific provisions of the California Labor Code alleged to have been
11 violated (other than those listed in Section 2699.5), including the facts
12 and theories to support the alleged violation.

13 (b) An aggrieved employee's notice filed with the LWDA pursuant to
14 2699.3(c) and any employer response to that notice shall be
15 accompanied by a filing fee of seventy-five dollars (\$75).

16 (c) The employer may cure the alleged violation within thirty-three (33)
17 calendar days of the postmark date of the notice. The employer shall
18 give written notice by certified mail within that period of time to the
19 aggrieved employee or representative and the agency if the alleged
20 violation is cured, including a description of actions taken, and no civil
21 action pursuant to Section 2699 may commence. If the alleged violation
22 is not cured within the 33-day period, the employee may commence a
23 civil action pursuant to Section 2699.

24 36. On December 4, 2023, Plaintiff provided written notice by online filing to the
25 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
26 Code alleged to have been violated, including facts and theories to support the alleged
27 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
28 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The

1 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
2 Plaintiff PAGA Case Number LWDA-CM-997829-23. A true and correct copy of Plaintiff's
3 written notice to the LWDA and Defendants dated December 4, 2023, is attached hereto as
4 "Exhibit 1."

5 37. As of the filing date of this complaint, over 65 days have passed since Plaintiff
6 sent the written notice described above, and the LWDA has not responded that it intends to
7 investigate Plaintiff's claims, and Defendants have not cured the violations.

8 38. Thus, Plaintiff has satisfied the administrative prerequisites under California
9 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
10 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
11 516, 1174(d), 1182.12, 1194, 1197, and 1198.

12 39. Labor Code section 558(a) provides "[a]ny employer or other person acting on
13 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare
15 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
16 dollars (\$50) for each underpaid employee for each pay period for which the employee was
17 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
18 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
19 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
20 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
21 as a private attorney general, seeks assessment and collection of civil penalties under Labor
22 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
23 California against Defendants for violations of Labor Code sections 510, 512(a), 516, and
24 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
25 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
26 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the
27 applicable IWC Wage Order.

28 40. Defendants, at all times relevant to this complaint, were employers or persons

1 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
2 Employees' rights by violating various sections of the California Labor Code as set forth
3 above.

4 41. As set forth below, Defendants have violated numerous provisions of both the
5 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
6 Order.

7 42. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
8 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
9 private attorney general, seeks assessment and collection of civil penalties for herself, all other
10 non-party Aggrieved Employees, and the State of California against Defendants for violations
11 of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516,
12 1174(d), 1182.12, 1194, 1197, and 1198.

13 FIRST CAUSE OF ACTION

14 For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.*

15 (Against all Defendants)

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

18 44. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
19 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
20 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
21 510, 512(a), 1174(d), 1194, 1197, and 1198. Labor Code section 2699.3(c) permits aggrieved
22 employees, including Plaintiff, to recover civil penalties for violations of those Labor Code
23 sections not found in section 2699.5, including sections 246, 516, and 1182.12.

24 45. Defendants' conduct, as alleged herein, violates numerous sections of the
25 California Labor Code, including, but not limited to, the following:

- 26 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
27 Wage Order for Defendants' failure to compensate Plaintiff and other
28 non-party Aggrieved Employees with all required overtime pay, as set

1 forth below;

- 2 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
3 applicable IWC Wage Order for Defendants' failure to include all forms
4 of remuneration in the regular rate of pay as required by law for
5 purposes of paying overtime wages and/or meal and rest period
6 premiums to other non-party Aggrieved Employees, as set forth below;
- 7 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
8 the applicable IWC Wage Order for Defendants' failure to compensate
9 Plaintiff and other non-party Aggrieved Employees with at least
10 minimum wages for all hours worked, as set forth below;
- 11 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
12 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
13 and other non-party Aggrieved Employees with meal periods, as set
14 forth below;
- 15 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
16 applicable IWC Wage Order for Defendants' failure to authorize and
17 permit Plaintiff and other non-party Aggrieved Employees to take rest
18 periods, as set forth below;
- 19 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
20 IWC Wage Order for failure to provide accurate and complete wage
21 statements to Plaintiff and other non-party Aggrieved Employees, as set
22 forth below;
- 23 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
24 IWC Wage Order for failure to maintain payroll records, as set forth
25 below;
- 26 (h) Violation of Labor Code sections 204 for failure to pay all earned wages
27 during employment, as set forth below;
- 28 (i) Violation of Labor Code section 201 and 202 for failure to pay all

1 earned wages upon termination, as set forth below; and

- 2 (j) Violation of Labor Code sections 246 for failure to properly calculate
3 the sick leave paid to other non-party Aggrieved Employees, as set forth
4 below.

5 **FAILURE TO PAY OVERTIME**

6 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

7 46. Labor Code section 1198 makes it illegal to employ an employee under
8 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
9 Code section 1198 requires that "... the standard conditions of labor fixed by the commission
10 shall be the ... standard conditions of labor for employees. The employment of any employee
11 ... under conditions of labor prohibited by the order is unlawful."

12 47. California Labor Code section 1198 and the applicable IWC Wage Order
13 provide that it is unlawful to employ persons without compensating them at a rate of pay
14 either time-and-one-half or two-times that person's regular rate of pay, depending on the
15 number of hours worked by the person on a daily or weekly basis.

16 48. Specifically, the applicable IWC Wage Order provides that Defendants are and
17 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
18 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
19 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
20 (40) hours in a workweek.

21 49. The applicable IWC Wage Order further provides that Defendants are and were
22 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
23 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
24 An employee's regular rate of pay includes all remuneration for employment paid to, or on
25 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

26 50. California Labor Code section 510 codifies the right to overtime compensation
27 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
28 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the

seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

51. During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not recorded.

52. First, Defendants had, and continue to have, company-wide policies and/or practices requiring Plaintiff and other non-party Aggrieved Employees to perform various work-related tasks while off-the-clock before their shifts and during unpaid meal periods. For example, Defendants only provided Plaintiff and other non-party Aggrieved Employees with two (2) timekeeping machines to clock in for their shifts, thus forcing Plaintiff and other non-party Aggrieved Employees to wait in line off-the-clock and under Defendants' control, time which they were not paid. For instance, Plaintiff would arrive early in order to clock in for the start of her shifts, and was required to wait in a line for up to five (5) minutes to clock in, time for which she was not paid. Defendants' insufficient number of timekeeping machines also forced Plaintiff and other non-party Aggrieved Employees to wait in line off-the-clock and under Defendants' control in order to clock back in from their unpaid meal periods.

53. Additionally, Plaintiff and other non-party Aggrieved Employees were required to change into their uniforms and/or don and doff personal protective equipment ("PPE"), such as industrial ear plugs, hairnets, and hard hats, on the work premises. However, Defendants did not allow Plaintiff and other non-party Aggrieved Employees to report the time they spent donning and doffing their uniforms and/or PPE at the beginning and end of their shifts or during their meal periods, despite being on work premises and under Defendants' control. As a result, Plaintiff and other non-party Aggrieved Employees were required to spend time donning and doffing their uniforms and/or PPE off-the-clock.

1 54. Second, during the relevant time period, Defendants had, and continue to have,
2 a company-wide policy and/or practice of understaffing their jobsites while assigning heavy
3 workloads. Defendants also had a practice of failing to schedule meal periods which, in
4 conjunction with the assignment of heavy workloads, further caused Plaintiff and/or other
5 non-party Aggrieved Employees to not be relieved of their duties for compliant meal periods.
6 As a result of this lack of meal period coverage, Plaintiff and/or other non-party Aggrieved
7 Employees were not always afforded uninterrupted 30-minute meal periods during shifts when
8 they were entitled to receive a meal period.

9 55. Third, Defendants maintained a company-wide on-premises meal period policy,
10 which mandated that Plaintiff and other non-party Aggrieved Employees remain on
11 Defendants' premises during their unpaid meal periods. Because Plaintiff and other non-party
12 Aggrieved Employees were restricted from leaving the premises during meal periods, they
13 were denied the ability to use their meal periods freely for their own purposes. For example,
14 Plaintiff and other non-party Aggrieved Employees were unable to run personal errands
15 because they were unable to leave the work premises. Thus, Defendants effectively
16 maintained control over Plaintiff and other non-party Aggrieved Employees during their
17 unpaid meal periods.

18 56. Defendants knew or should have known that as a result of these company-wide
19 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
20 their assigned duties off-the-clock before and after their shifts and during meal periods, and
21 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
22 and other non-party Aggrieved Employees worked shifts of eight (8) hours or more a day, or
23 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
24 premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid
25 overtime wages for all of the overtime hours they actually worked.

26 57. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
27 correct overtime rate for the recorded overtime hours that they generated. In addition to an
28 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,

1 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
2 California Labor Code, Defendants failed to incorporate all compensation, including incentive
3 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
4 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
5 times when other non-party Aggrieved Employees worked overtime and received these other
6 forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate
7 than required.

8 58. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
9 the balance of overtime compensation as required by California law, violates the provisions of
10 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
11 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
12 558 and/or 2699(a), (f), and (g).

13 **FAILURE TO PAY MINIMUM WAGES**

14 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

15 59. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
16 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
17 to be paid to employees, and the payment of a wage less than the minimum so fixed is
18 unlawful. Compensable work time is defined in Wage Order No. 3-2001 as "the time during
19 which an employee is subject to the control of an employer, and includes all the time the
20 employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs.
21 tit. 8, § 11030(2)(H) (defining "Hours Worked").

22 60. As stated, during the relevant time period, Defendants had a company-wide
23 policy and/or practice requiring Plaintiff and other non-party Aggrieved Employees to
24 perform various work-related tasks while off-the-clock before their shifts or during meal
25 periods. As stated, Plaintiff and other non-party Aggrieved Employees were required to wait
26 in line for a timekeeping machine to clock in for their scheduled shifts and to clock back in
27 from their unpaid meal periods. As also stated, Plaintiff and other non-party Aggrieved
28 Employees worked off-the-clock during meal periods by having to spend time donning and

1 doffing their uniforms and/or PPE when entering Defendants' premises before clocking in,
2 when returning from a meal period, and when exiting the premises after clocking out for a
3 shift and when leaving for a meal period.

4 61. Further, due to Defendants' policies and/or practices of understaffing their
5 jobsites while assigning heavy workloads, failing to schedule meal periods, and/or requiring
6 employees to stay on the work premises during meal periods, Plaintiff and other non-party
7 Aggrieved Employees were prevented from taking all uninterrupted meal periods to which
8 they were entitled and were required to work off-the-clock during meal periods, have their
9 meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal
10 periods.

11 62. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
12 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
13 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
14 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
15 1194, 1197, and 1198.

16 63. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
17 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
18 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
19 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

20 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

21 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

22 64. At all relevant times herein set forth, the applicable IWC Wage Order and
23 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
24 non-party Aggrieved Employees' employment by Defendants.

25 65. At all relevant times herein set forth, California Labor Code section 512(a)
26 provides that an employer may not require, cause, or permit an employee to work for a period
27 of more than five (5) hours per day without providing the employee with a meal period of not
28 less than thirty (30) minutes, except that if the total work period per day of the employee is

1 not more than six (6) hours, the meal period may be waived by mutual consent of both the
2 employer and the employee. Under California law, first meal periods must start after no more
3 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

4 66. At all relevant times herein set forth, California Labor Code sections 226.7,
5 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
6 meal period mandated by an applicable order of the IWC.

7 67. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
8 and the applicable IWC Wage Order also require employers to provide a second meal period
9 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
10 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
11 total hours worked is no more than twelve (12) hours, the second meal period may be waived
12 by mutual consent of the employer and the employee only if the first meal period was not
13 waived.

14 68. First, during the relevant time period, as stated, Defendants had, and continue
15 to have, a company-wide policy and/or practice of understaffing, which combined with the
16 assignment of heavy workloads has resulted in a lack of meal period coverage and prevented
17 Plaintiff and other non-party Aggrieved Employees from taking all timely, uninterrupted meal
18 periods to which they were entitled. Further, as stated, Defendants had a company-wide
19 practice and/or policy of failing to schedule meal periods, which further caused Plaintiff and
20 other non-party Aggrieved Employees to not be relieved of their duties for compliant meal
21 periods. As also stated, Plaintiff and other non-party Aggrieved Employees worked during
22 meal periods by having to spend time waiting to clock in at an insufficient number of
23 timekeeping machines and donning and doffing their uniforms and/or PPE.

24 69. Second, as stated, Defendants maintained a company-wide on-premises meal
25 period policy, which mandated that Plaintiff and other non-party Aggrieved Employees
26 remain on the work premises during their meal periods. Because Plaintiff and other non-party
27 Aggrieved Employees were restricted from leaving the premises during meal periods, they
28 were denied the ability to use their meal periods freely for their own purposes, such as running

1 personal errands. Thus, Defendants effectively maintained control over Plaintiff and other
2 non-party Aggrieved Employees during meal periods.

3 70. Defendants' practices and policies prevented Plaintiff and other non-party
4 Aggrieved Employees from taking all compliant meal periods to which they were entitled. As
5 a result, Plaintiff and other non-party Aggrieved Employees had to work through all or part of
6 their meal periods, had their meal periods interrupted, and/or had to wait extended periods of
7 time before taking meal periods.

8 71. Third, Defendants did not provide Plaintiff and other non-party Aggrieved
9 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
10 hours in one day. Plaintiff and other non-party Aggrieved Employees did not sign valid meal
11 period waivers on days that they were entitled to meal periods and were not relieved of all
12 duties.

13 72. At all times herein mentioned, Defendants knew or should have known that, as
14 a result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented
15 from being relieved of all duties and required to perform some of their assigned duties during
16 meal periods. Defendants further knew or should have known that they did not pay Plaintiff
17 and other non-party Aggrieved Employees meal period premiums when meal periods were
18 late, interrupted, shortened, and/or missed.

19 73. Moreover, Defendants engaged in a company-wide practice and/or policy of
20 not paying all meal period premiums owed when compliant meal periods are not provided.
21 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
22 have not received premium pay for missed, late, and interrupted meal periods. Alternatively,
23 to the extent that Defendants did pay other non-party Aggrieved Employees premium pay for
24 missed, late, and interrupted meal periods, Defendants did not pay other non-party Aggrieved
25 Employees at the correct rate of pay for premiums because Defendants systematically failed to
26 include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or
27 other forms of remuneration, in the regular rate of pay.

28 74. Defendants' conduct violates the applicable IWC Wage Order, and California

1 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
2 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
3 558 and/or 2699(a), (f), and (g).

4 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

5 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

6 75. At all relevant times herein set forth, the applicable IWC Wage Order and
7 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
8 non-party Aggrieved Employees' employment by Defendants.

9 76. At all relevant times, the applicable IWC Wage Order provides that "[e]very
10 employer shall authorize and permit all employees to take rest periods, which insofar as
11 practicable shall be in the middle of each work period" and that the "rest period time shall be
12 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
13 hours or major fraction thereof" unless the total daily work time is less than three and one-half
14 (3 ½) hours.

15 77. At all relevant times, California Labor Code section 226.7 provides that no
16 employer shall require an employee to work during any rest period mandated by an applicable
17 order of the California IWC. To comply with its obligation to authorize and permit rest
18 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
19 employer must "relinquish any control over how employees spend their break time, and
20 relieve their employees of all duties—including the obligation that an employee remain on
21 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
22 *Inc.*, 2 Cal. 5th 257, 273 (2016).

23 78. Pursuant to the applicable IWC Wage Order and California Labor Code section
24 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
25 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
26 required rest period was not authorized and permitted.

27 79. During the relevant time period, Defendants regularly failed to authorize and
28 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest

1 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
2 Defendants' company-wide practices of understaffing and assigning heavy workloads
3 prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duties
4 to take rest periods. Additionally, Defendants failed to adhere to a schedule for rest periods,
5 which, coupled with Defendants' failure to provide adequate rest period coverage, further led
6 to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to
7 take rest periods. Moreover, to the extent that Defendants required Plaintiff and other non-
8 party Aggrieved Employees to don and doff PPE and/or uniforms during rest periods, Plaintiff
9 and other non-party Aggrieved Employees were not relieved of all duty in order to take
10 compliant rest periods.

11 80. Furthermore, Defendants maintained a company-wide on-premises rest period
12 policy, which mandated that Plaintiff and other non-party Aggrieved Employees remain on the
13 work premises during their rest periods. Because Plaintiff and other non-party Aggrieved
14 Employees were restricted from leaving the premises during rest periods, they were denied the
15 ability to use their rest periods freely for their own purposes, such as running personal errands.
16 Thus, Defendants effectively maintained control over Plaintiff and other non-party Aggrieved
17 Employees during rest periods.

18 81. As a result of Defendants' practices and policies, Plaintiff and other non-party
19 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
20 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
21 were entitled. For example, on days when Plaintiff worked in excess of ten (10) hours in one
22 day, Plaintiff never received a third rest period. When Plaintiff was able to take rest periods,
23 they would often be cut short so she could timely return to work.

24 82. Defendants have also engaged in a systematic, company-wide practice and/or
25 policy of not paying rest period premiums owed when rest periods are not authorized and
26 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
27 Employees have not received premium pay for all missed rest periods. Alternatively, to the
28 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour

1 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
2 Employees at the correct rate of pay for premiums because Defendants failed to include all
3 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
4 of remuneration, in the regular rate of pay.

5 83. Accordingly, Defendants failed to authorize and permit all compliant rest
6 periods and failed to pay the full rest period premiums due. Defendants' conduct violates the
7 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
8 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
9 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

10 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

11 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

12 84. At all relevant times herein, California Labor Code section 226(a) provides that
13 every employer shall furnish each of his or her employees an accurate and complete itemized
14 wage statement in writing, including, but not limited to, the name and address of the legal
15 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
16 applicable rates of pay.

17 85. During the relevant time period, Defendants have knowingly and intentionally
18 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
19 inaccurate wage statements. For example, Defendants issued uniform wage statements to
20 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
21 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
22 the pay period, including rates of pay for overtime wages, meal and rest period premiums,
23 and/or paid sick leave, and the corresponding number of hours worked at each hourly rate.
24 Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

25 86. Because Defendants did not record the time Plaintiff and other non-party
26 Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount
27 of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in
28 compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason,

1 Defendants failed to accurately list the total number of hours worked by Plaintiff and other
2 non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list the
3 applicable hourly rates of pay in effect during the pay period and the corresponding accurate
4 number of hours worked at each hourly rate, in violation of section 226(a)(9).

5 87. Additionally, because Defendants did not calculate other non-party Aggrieved
6 Employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest
7 period premiums, and/or paid sick leave, Defendants did not list the correct amount of gross
8 wages in compliance with section 226(a)(1). For the same reason, Defendants also failed to
9 list the correct amount of net wages in violation of section 226(a)(5). Defendants also failed
10 to correctly list all applicable hourly rates in effect during the pay period, namely, correct
11 rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in
12 violation of section 226(a)(9).

13 88. The wage statement deficiencies also include, among other things, failing to list
14 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
15 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
16 for which aggrieved employees were paid; failing to list the name of the employee and only
17 the last four digits of his or her social security number or an employee identification number
18 other than a social security number; failing to list the name and address of the legal entity that
19 is the employer; and/or failing to state all hours worked as a result of not recording or stating
20 hours worked off-the-clock.

21 89. California Labor Code section 1174(d) provides that "[e]very person employing
22 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
23 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
24 plants or establishments at which employees are employed, payroll records showing the hours
25 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
26 applicable piece rate paid to, employees employed at the respective plants or
27 establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500
28 civil penalty if they fail to maintain accurate and complete records as required by section

1 1174(d). At all relevant times, and in violation of Labor Code section 1174(d), Defendants
2 willfully failed to maintain accurate payroll records for Plaintiff and other non-party Aggrieved
3 Employees showing the daily hours they worked and the wages paid thereto as a result of failing
4 to record the off-the-clock hours that they worked.

5 90. California Labor Code section 1198 provides that the maximum hours of work
6 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
7 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
8 employment of any employees for longer hours than those fixed by the order or under
9 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
10 Wage Order, employers are required to keep accurate time records showing when the
11 employee begins and ends each work period and meal period. During the relevant time
12 period, Defendants engaged in company-wide practices and/or policies of failing to record
13 actual hours worked, and thereby failed to keep accurate records of work period and meal
14 period start and stop times for Plaintiff and other non-party Aggrieved Employees, in violation
15 of section 1198. Also, in light of Defendants’ failure to provide Plaintiff and other non-party
16 Aggrieved Employees with second 30-minute meal periods to which they were entitled,
17 Defendants kept no records of meal start and end times for second meal periods.

18 91. Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198.
19 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
20 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

21 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

22 **VIOLATION OF LABOR CODE SECTION 204**

23 92. At all relevant times herein set forth, California Labor Code section 204
24 requires that all wages earned by any person in any employment between the 1st and the 15th
25 days, inclusive, of any calendar month, other than those wages due upon termination of an
26 employee, are due and payable between the 16th and the 26th day of the month during which
27 the labor was performed. Labor Code section 204 further provides that all wages earned by
28 any person in any employment between the 16th and the last day, inclusive, of any calendar

1 month, other than those wages due upon termination of an employee, are due and payable
2 between the 1st and the 10th day of the following month.

3 93. At all relevant times herein, California Labor Code section 204 also requires
4 that all wages earned for labor in excess of the normal work period shall be paid no later than
5 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
6 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
7 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
8 more than seven (7) calendar days following the close of the payroll period.

9 94. During the relevant time period, Defendants willfully failed to pay Plaintiff and
10 other non-party Aggrieved Employees all wages due to them within any time period specified
11 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
12 wages, meal and rest period premiums, and/or sick leave pay.

13 95. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
14 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

15 **FAILURE TO PAY WAGES UPON TERMINATION**

16 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

17 96. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
18 that if an employer discharges an employee, the wages earned and unpaid at the time, of
19 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
20 her employment, his or her wages shall become due and payable not later than seventy-two
21 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
22 his or her intention to quit, in which case the employee is entitled to his or her wages at the
23 time of quitting.

24 97. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
25 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
26 above, including but not limited to, overtime wages, minimum wages, meal and rest period
27 premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72)
28 hours of their leaving Defendants' employ.

1 98. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
2 who are no longer employed by Defendants their wages earned and unpaid at the time of
3 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
4 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
5 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
6 2699(a), (f), and (g).

7 **FAILURE TO PROPERLY CALCULATE SICK LEAVE RATES OF PAY**

8 **VIOLATION OF LABOR CODE SECTION 246**

9 99. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
10 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
11 days from the commencement of employment with paid sick days, to be accrued at least one
12 hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3)
13 days of paid sick leave (or equivalent paid leave or paid time off) in each year of the
14 employee's employment. Further, Labor Code section 246(l) provides that an employer shall
15 calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt
16 employees shall be calculated in the same manner as the regular rate of pay for the workweek
17 in which the employee uses paid sick time, whether or not the employee actually works
18 overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be
19 calculated by dividing the employee's total wages, not including overtime premium pay, by
20 the employee's total hours worked in the full pay periods of the prior 90 days of
21 employment."

22 100. During the relevant time period, Defendants did not pay other non-party
23 Aggrieved Employees the correct sick leave rates of pay. In addition to an hourly wage,
24 Defendants paid other non-party Aggrieved Employees incentive pay, nondiscretionary
25 bonuses, and/or other forms of remuneration. However, in violation of the California Labor
26 Code, Defendants failed to incorporate all remunerations, including incentive pay and/or
27 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
28 calculating the sick leave rate. Therefore, during times when other non-party Aggrieved

1 Employees took sick leave and received these other forms of pay, Defendants failed to pay all
2 sick leave benefits by paying a lower sick leave rate than required. Specifically, Defendants
3 paid other non-party Aggrieved Employees sick leave based on their hourly rate of pay instead
4 of their regular rate of pay. Defendants' failure to properly calculate the sick leave rates of pay
5 based on all remuneration paid has resulted in an underpayment of sick leave benefits to other
6 non-party Aggrieved Employees on a company-wide basis in violation of California Labor Code
7 sections 246(l).

8 101. Other non-party Aggrieved Employees are therefore entitled to recover civil
9 penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

10 **REQUEST FOR JURY TRIAL**

11 Plaintiff requests a trial by jury.

12 **PRAYER FOR RELIEF**

13 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
14 judgment against Defendants, jointly and severally, as follows:

15 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
16 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different
17 amount.

18 **As to the First Cause of Action**

19 2. That the Court declare, adjudge and decree that Defendants violated the
20 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
21 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
22 (by failing to include all forms of remuneration in the regular rate of pay for purposes of
23 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and
24 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
25 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
26 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
27 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
28 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon

1 termination); and 246 (by failing to properly calculate sick leave pay);

2 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3,
3 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
4 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, and 1198;

5 4. For attorneys' fees and costs pursuant to California Labor Code section
6 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
7 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12,
8 1194, 1197, and 1198;

9 5. For pre-judgment and post-judgment interest as provided by law; and

10 6. For such other and further relief as the Court may deem equitable and
11 appropriate.

12
13 Dated: February 13, 2024

Respectfully submitted,

14 Capstone Law APC

15
16 By: Roxanna Tabatabaee

Roxanna Tabatabaee

17 Ryan Tish

18 Alexander Wallin

19 Attorneys for Plaintiff Alisha Aguayo
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27
28

EXHIBIT “1”



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ALEXANDER LIMA
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December 4, 2023

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Alisha Aguayo v. Wawona Frozen Foods*

Dear PAGA Administrator:

This office represents Alisha Aguayo in connection with her claims under the California Labor Code. Ms. Aguayo was an employee of WAWONA FROZEN FOODS ("WAWONA FF").

The employer may be contacted directly at the address below:

WAWONA FROZEN FOODS
100 W ALLUVIAL AVE
CLOVIS CA 93611

Ms. Aguayo intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Aguayo seeks relief on behalf of herself, the State of California, and other persons who are or were employed by WAWONA FF as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

WAWONA FF employed Ms. Aguayo as an hourly paid, non-exempt employee from approximately August 2023 to September 2023. Ms. Aguayo worked for WAWONA FF as a Production Worker at its location in Clovis, California. During her employment, Ms. Aguayo typically worked eight (8) or more hours per day and five (5) days per week. By the end of her employment, Ms. Aguayo was compensated approximately \$15.50 per hour. Her job duties included, without limitation, inspecting and sorting fruit; mixing, measuring, and pouring ingredients; and cleaning up work areas.

WAWONA FF committed one or more of the following Labor Code violations against Ms. Aguayo, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California

Labor Code section 2699(c):¹

WAWONA FF's Company-Wide and Uniform Payroll and HR Practices

WAWONA FROZEN FOODS is a California corporation and specialized in the growing and freezing of fresh fruit, and supplying the retail, club store, school, and food ingredient industries with fruit products. Upon information and belief, WAWONA FF maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Clovis, California, for all non-exempt, hourly paid employees working for WAWONA FF in California, including Ms. Aguayo and other aggrieved employees. At all relevant times, WAWONA FF issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Aguayo and other aggrieved employees, regardless of their location or position.

Upon information and belief, WAWONA FF maintains a centralized Payroll department at its corporate headquarters in Clovis, California, which processes payroll for all non-exempt, hourly paid employees working for WAWONA FF in California, including Ms. Aguayo and other aggrieved employees. Further, WAWONA FF issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Aguayo and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, WAWONA FF utilized the same methods and formulas when calculating wages due to Ms. Aguayo and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

WAWONA FF willfully failed to pay all overtime wages owed to Ms. Aguayo and other aggrieved employees. During the relevant time period, Ms. Aguayo and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

¹ These facts, theories, and claims are based on Ms. Aguayo's experience and counsel's review of those records currently available relating to Ms. Aguayo's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Ms. Aguayo reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

First, WAWONA FF had, and continues to have, company-wide policies and/or practices requiring Ms. Aguayo and other aggrieved employees to perform various work-related tasks while off-the-clock before their shifts and during unpaid meal breaks. For example, WAWONA FF only provided Ms. Aguayo and other aggrieved employees with two (2) timekeeping machines to clock in for their shifts, thus forcing Ms. Aguayo and other aggrieved employees to wait in line off-the-clock and under WAWONA FF's control, time which they were not paid. For instance, Ms. Aguayo would arrive early in order to clock in for the start of her shifts, and was required to wait in a line for up to five (5) minutes to clock in, time for which she was not paid. Wawona FF's insufficient number of timekeeping machines also forced Ms. Aguayo and other aggrieved employees to wait in line off-the-clock and under WAWONA FF's control in order to clock back in from their unpaid meal periods.

Additionally, Ms. Aguayo and other aggrieved employees were required to change into their uniforms and/or don and doff personal protective equipment ("PPE"), such as industrial ear plugs, hairnets, and hard hats, on the work premises. However, WAWONA FF did not allow Ms. Aguayo and other aggrieved employees to report the time they spent donning and doffing their uniforms and/or PPE at the beginning and end of their shifts or during their meal periods, despite being on work premises and under WAWONA FF's control. As a result, Ms. Aguayo and other aggrieved employees were required to spend time donning and doffing their uniforms and/or PPE off-the-clock.

Second, during the relevant time period, WAWONA FF had, and continues to have, a company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads. WAWONA FF also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Ms. Aguayo and/or other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Ms. Aguayo and/or other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period.

Third, WAWONA FF maintained a company-wide on-premises meal period policy, which mandated that Ms. Aguayo and other aggrieved employees remain on WAWONA FF's premises during their unpaid meal periods. Because Ms. Aguayo and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, Ms. Aguayo and other aggrieved employees were unable to run personal errands because they were unable to leave the work premises. Thus, WAWONA FF effectively maintained control over Ms. Aguayo and other aggrieved employees during their unpaid meal periods.

WAWONA FF knew or should have known that as a result of these company-wide practices and/or policies, Ms. Aguayo and other aggrieved employees were performing assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Aguayo and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Aguayo and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, WAWONA FF did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, WAWONA FF paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, WAWONA FF failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms

of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, WAWONA FF failed to pay all overtime wages by paying a lower overtime rate than required.

WAWONA FF's failure to pay Ms. Aguayo and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Aguayo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 3-2001 as "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, whether or not required to do so." Cal. Code Regs. Tit. 8, § 11030(2)(H) (defining "Hours Worked").

As stated, during the relevant time period, WAWONA FF had a company-wide policy and/or practice requiring Ms. Aguayo and other aggrieved employees to perform various work-related tasks while off-the-clock before their shifts or during meal periods. As stated, Ms. Aguayo and other aggrieved employees were required to wait in line for a timekeeping machine to clock in for their scheduled shifts and to clock back in from their unpaid meal periods. As also stated, Ms. Aguayo and other aggrieved employees worked off-the-clock during meal periods by having to spend time donning and doffing their uniforms and/or PPE when entering WAWONA FF's premises before clocking in, when returning from a meal period, and when exiting the premises after clocking out for a shift and when leaving for a meal period. .

Further, due to WAWONA FF's policies and/or practices of understaffing its jobsites while assigning heavy workloads, failing to schedule meal periods, and/or requiring employees to stay on the work premises during meal periods, Ms. Aguayo and other aggrieved employees were prevented from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Thus, WAWONA FF did not pay at least minimum wages for all hours worked by Ms. Aguayo and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, WAWONA FF did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, WAWONA FF regularly failed to pay at least minimum wages to Ms. Aguayo and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Aguayo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, 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.

First, during the relevant time period, as stated, WAWONA FF had, and continues to have, a company-wide policy and/or practice of understaffing, which combined with the assignment of heavy workloads has resulted in a lack of meal period coverage and prevented Ms. Aguayo and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, WAWONA FF had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Ms. Aguayo and other aggrieved employees to not be relieved of their duties for compliant meal periods. As also stated, Ms. Aguayo and other aggrieved employees worked during meal periods by having to spend time waiting to clock in at an insufficient number of timekeeping machines and donning and doffing their uniforms and/or PPE.

Second, as stated, WAWONA FF maintained a company-wide on-premises meal period policy, which mandated that Ms. Aguayo and other aggrieved employees remain on the work premises during their meal periods. Because Ms. Aguayo and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, WAWONA FF effectively maintained control over Ms. Aguayo and other aggrieved employees during meal periods.

WAWONA FF's practices and policies prevented Ms. Aguayo and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Ms. Aguayo and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods.

Third, WAWONA FF did not provide Ms. Aguayo and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Aguayo and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

WAWONA FF knew or should have known that as a result of its company-wide policies and/or practices, Ms. Aguayo and other aggrieved employees were prevented from being relieved of all

duties and required to perform some of their assigned duties during meal periods. WAWONA FF further knew or should have known that it did not pay Ms. Aguayo and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, WAWONA FF engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Aguayo and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that WAWONA FF did pay other aggrieved employees for missed, late, and interrupted meal periods, WAWONA FF did not pay other aggrieved employees at the correct rate of pay for premiums because WAWONA FF systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, WAWONA FF failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Aguayo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, WAWONA FF regularly failed to authorize and permit Ms. Aguayo and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, WAWONA FF's company-wide practices of understaffing and assigning heavy workloads prevented Ms. Aguayo and other aggrieved employees from being relieved of all duties to take rest periods. Additionally, WAWONA FF failed to adhere to schedule rest periods, which, coupled with WAWONA FF's failure to provide adequate rest period coverage, further led to Ms. Aguayo and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, to the extent that WAWONA FF required Ms. Aguayo and other aggrieved employees to don and doff PPE and/or uniforms during rest periods, Ms. Aguayo and other aggrieved employees were not relieved of all duty in order to take complaint rest periods.

Furthermore, WAWONA FF maintained a company-wide on-premises rest period policy, which mandated that Ms. Aguayo and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Aguayo and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, WAWONA FF effectively maintained control over Ms. Aguayo and other aggrieved employees during rest periods.

As a result of WAWONA FF's practices and policies, Ms. Aguayo and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, on days when Ms. Aguayo worked in excess of ten (10) hours in one day, Ms. Aguayo never received a third rest period. When Ms. Aguayo was able to take rest periods, they would often be cut short so she could timely return to work.

WAWONA FF also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Aguayo and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that WAWONA FF did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, WAWONA FF did not pay other aggrieved employees at the correct rate of pay for premiums because WAWONA FF failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, WAWONA FF failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Aguayo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. WAWONA FF has not provided Ms. Aguayo and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, WAWONA FF has knowingly and intentionally provided Ms. Aguayo and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, WAWONA FF issued uniform wage statements to Ms. Aguayo and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours

worked at each hourly rate. Specifically, WAWONA FF violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because WAWONA FF did not record the time Ms. Aguayo and other aggrieved employees spent working off-the-clock, WAWONA FF did not list the correct amount of gross wages and net wages earned by Ms. Aguayo and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, WAWONA FF failed to accurately list the total number of hours worked by Ms. Aguayo and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

In addition, because WAWONA FF did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, WAWONA FF did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). WAWONA FF also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments" Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), WAWONA FF willfully failed to maintain accurate payroll records for Ms. Aguayo and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, WAWONA FF engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Aguayo and other aggrieved employees, in violation of section 1198. Furthermore, in light of WAWONA FF's failure to provide Ms. Aguayo and other

aggrieved employees with second 30-minute meal periods to which they were entitled, WAWONA FF kept no records of meal start and end times for second meal periods.

Because WAWONA FF failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Aguayo and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Aguayo and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Aguayo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires 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. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, WAWONA FF failed to pay Ms. Aguayo and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay within any time period specified by California Labor Code section 204.

Ms. Aguayo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

During the relevant time period, WAWONA FF willfully failed to pay Ms. Aguayo and other aggrieved employees who are no longer employed by WAWONA FF all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums,

and/or sick leave pay either at the time of discharge, or within seventy-two (72) hours of their leaving WAWONA FF's employ.

Ms. Aguayo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, WAWONA FF did not pay other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, WAWONA FF paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, on information and belief, WAWONA FF failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, WAWONA FF failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, WAWONA FF paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

WAWONA FF's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging

allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

WAWONA FF failed to provide Ms. Aguayo and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). WAWONA FF's failure to provide Ms. Aguayo and other aggrieved employees with written notice of basic information regarding their employment with WAWONA FF is in violation of Labor Code section 2810.5.

Ms. Aguayo and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." WAWONA FF, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Aguayo's and other aggrieved employees' rights by violating various sections of the California Labor Code.

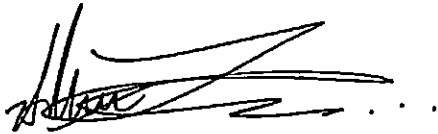
Accordingly, Ms. Aguayo seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Aguayo, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against WAWONA FF for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Aguayo seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', with a large, sweeping flourish extending to the right.

Alexander Lima

Copy: WAWONA FROZEN FOODS (via U.S. Certified Mail)

Capstone Law, APC
875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2264 6390

U.S. Postal Service®
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

OFFICIAL USE

AGENCY USE

WAWONA

WAWONA FROZEN FOODS
100 W ALLUVIAL AVE
CLOVIS CA 93611

WAWONA FROZEN FOODS
100 W ALLUVIAL AVE
CLOVIS CA 93611

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

WAWONA FROZEN FOODS
100 W ALLUVIAL AVE
CLOVIS CA 93611



9590 9402 7690 2122 7214 92

2. Article Number (Transfer from service label)

7022 2410 0000 2264 6390

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

Received by (Printed Name)

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

WAWONA FROZEN FOODS
100 W ALLUVIAL AVE
CLOVIS CA 93611



9590 9402 7690 2122 7214 92

2. Article Number (Transfer from service label)

7022 2410 0000 2264 6390

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent☐ Addressee

Received by (Printed Name)

LOU PARKER

C. Date of Delivery

12/6/23

Is delivery address different from Item 1? ☐ YesIf YES, enter delivery address below: ☒ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

1 Mail

1 Mail Restricted Delivery

500)

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt