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9 GILBER SANTIAGO LOPEZ HERNANDEZ, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

12 **(UNLIMITED JURISDICTION)**

13 GILBER SANTIAGO LOPEZ HERNANDEZ
14 (aka Jilber Hernandes), as an “aggrieved
15 employee” on behalf of himself and other
16 similarly situated “aggrieved employees”
17 under the Labor Code Private Attorneys
18 General Act of 2004,

19 *Plaintiff,*

20 vs.

21 YSABEL LLC, a California limited liability
22 company; and DOES 1 to 25, inclusive,

23 *Defendants.*

Case No. 24STCV09090

**COMPLAINT FOR VIOLATIONS
OF THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED

1
2 Plaintiff, Gilber Santiago Lopez Hernandez (aka Jilber Hernandes) (hereafter “Plaintiff”),
3 on behalf of himself, the State of California, and the other Aggrieved Employees, complains and
4 alleges as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this representative action under the Labor Code Private Attorneys
7 General Act of 2004, § 2698, *et seq.* (“PAGA”) based on alleged violations of the California
8 Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”),
9 against Defendants YSABEL LLC, a California limited liability company, and DOES 1 to 25,
10 inclusive (collectively “YSABEL” or “Defendants”).

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
12 him, the State of California, and the Aggrieved Employees (defined below), for civil penalties
13 and other related relief. These claims are based on Defendants’ failures to: 1) pay all wages,
14 including minimum, regular, overtime, and doubletime wages earned for all hours worked at the
15 correct rates of pay; 2) provide meal periods or pay correctly-calculated premium wages in lieu
16 thereof; 3) authorize and permit rest periods or pay correctly-calculated premium wages in lieu
17 thereof; 4) indemnify for business expenses; 5) issue only accurate and complete itemized wage
18 statements; 6) timely pay wages during employment; 7) timely pay wages upon separation from
19 employment; and 8) maintain accurate employment records. Accordingly, Plaintiff now seeks to
20 recover civil penalties and related relief through this representative action.

21 **JURISDICTION AND VENUE**

22 3. Jurisdiction and Venue are proper in this Court and this action is properly filed in
23 the County of Los Angeles in this judicial district because Defendants Ysabel LLC and DOES 1
24 to 25, inclusive, do business in the County of Los Angeles and because Defendants’ obligations
25 and liabilities arise therein, and because the work that was performed by Plaintiff and the
26 Aggrieved Employees in the County of Los Angeles is the subject of this action. Moreover, the
27 aggregate claims of Plaintiff and the Aggrieved Employees, inclusive of all relief, place more
28 than \$25,000 in controversy.

THE PARTIES

4. Plaintiff Gilber Santiago Lopez Hernandez is resident of Los Angeles County, California.

5. Defendant Ysabel LLC is a limited liability company organized and existing under the laws of California and as such, a citizen of California based on Plaintiff's information and belief.

6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1-25, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

7. The "Aggrieved Employees" are all individuals the Defendants have employed or otherwise contracted with in California as hourly, non-exempt employers, during the period beginning one year before the Plaintiff's notice of February 1, 2024 to the California Labor and Workforce Development Agency ("LWDA") and ending on the date judgment is entered.

8. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

9. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved Employees in accordance with applicable California labor laws as alleged herein.

10. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other

1 defendants, and that said acts and failures to act were within the course and scope of said agency,
2 employment, and/or direction and control.

3 **FACTUAL ALLEGATIONS**

4 11. IWC Wage Order 5-2001 (“the Wage Order”) applies to “all persons employed in
5 the public housekeeping industry,” where “Public Housekeeping Industry” includes
6 “Restaurants.” (*Id.*, §§ 1 & 2(P)(1).). At all relevant times during the applicable limitations period,
7 YSABEL operated a restaurant. Accordingly, Plaintiff and the Aggrieved Employees are entitled
8 to the protections provided under the Wage Order.

9 12. YSABEL first began to employ Plaintiff in or around November 2022 to work at
10 its restaurant located at 945 N. Fairfax Ave, West Hollywood, CA 90046. During his
11 employment, Plaintiff’s job titles included “kitchen prep.” Plaintiff generally worked five days a
12 week from approximately 8:00 a.m. to 4:30 p.m. Plaintiff’s employment ended on or around
13 January 20, 2024.

14 13. At all relevant times, YSABEL has issued wages to Plaintiff and all of the other
15 Aggrieved Employees on a bi-weekly basis and paid him by the hour. At all relevant times,
16 YSABEL has classified Plaintiff and all of the other Aggrieved Employees as a non-exempt
17 employee entitled to the protections of the Labor Code and the Wage Order. Plaintiff’s latest rate
18 of pay is approximately \$18.00 per hour.

19 14. YSABEL has failed to pay Plaintiff and the other Aggrieved Employees for all
20 time worked or subject to its control. YSABEL required Plaintiff and the Aggrieved Employees
21 to perform necessary work duties prior to clocking in for the start of their shifts and after clocking
22 out at the end of their shifts and failed to compensate them for this time. For example, Plaintiff
23 would arrive to work and start weighing the meat prior to clocking in and would have to clock
24 out at the end of his shift and continue to grill the meat, until someone took over. YSABEL has
25 failed to compensate Plaintiff and the Aggrieved Employees for all of this work performed off-
26 the-clock. Furthermore, to the extent Plaintiff and the Aggrieved Employees have worked through
27 their meal periods and those meal periods were interrupted, they were not compensated for that
28 time, which would be akin to a minimum wage violation.

1 15. Due to the above “off the clock” violations, YSABEL has failed to pay Plaintiff
2 and the Aggrieved Employees properly-calculated overtime wages. Plaintiff’s and the Aggrieved
3 Employees’ actual work hours, which included the “off the clock” work as described above,
4 entitled them to overtime, however, it was not company policy to keep accurate track of all hours
5 worked and to pay employees, like Plaintiff, the accurate amount of overtime, especially since
6 the “off the clock” work was not factored into the equation. Furthermore, any incentive payments
7 and/or bonus payments were not factored into the employees’ regular rate of pay for purposes of
8 deciphering the correct overtime rate of pay. In addition, any bonus and/or incentive payments
9 were not factored into the correct meal and rest break premium pay per *Ferra v. Loews Hollywood*
10 *Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

11 16. In addition, Plaintiff and the other Aggrieved Employees were not given accurate
12 tips to which they were entitled in violation of California Labor Code Section 351 and 353.

13 17. YSABEL has failed to provide all compliant meal periods and authorize and
14 permit all compliant rest periods to which Plaintiff and the other Aggrieved Employees were
15 entitled. Plaintiff is entitled to take off-duty, uninterrupted 30-minute meal periods before the fifth
16 hour of work and to take uninterrupted 10-minute rest periods for every four hours or major
17 fraction thereof worked. Due to the press of business, Plaintiff and the other Aggrieved Employees
18 would not be able to take timely, uninterrupted meal periods before the 5th hour worked. When
19 Plaintiff and the other Aggrieved Employees tried to take a meal period, YSABEL management
20 or the other staff would interrupt them with requests for assistance or questions about work related
21 matters. Similarly, YSABEL never authorized Plaintiff to take his 10 minute rest breaks. In fact,
22 Plaintiff has never taken his 10-minute rest breaks due to the work load/ press of business.
23 Compliant meal and rest breaks were definitively not part of YSABEL’s culture, especially in a
24 fast-paced restaurant environment. There was not even a break room for the employees; instead
25 employees had to go to the parking lot when they were able to take their meal breaks. On
26 information and belief, YSABEL did not always provide premium wages to Plaintiff for these
27 meal and rest break violations; if YSABEL did provide premium wages, they were not paid at the
28 correct rate, as explained above.

1 18. YSABEL has failed to reimburse Plaintiff and the other Aggrieved Employees for
2 the business expenses they incurred in direct consequence of the discharge of their duties. During
3 his employment, Plaintiff had to purchase his own set of knives to use in the kitchen. YSABEL
4 also required Plaintiff and the other Aggrieved Employees to use their own personal cell phones
5 to communicate with management concerning work matters and scheduling. YSABEL did not
6 reimburse Plaintiff and the other Aggrieved Employees for these supply and mobile phone
7 expenses. Accordingly, YSABEL was in violation of California Labor Code sections 2800 and
8 2802.

9 19. YSABEL has failed to pay Plaintiff and the other Aggrieved Employees all wages
10 due to them within any time period specified by California Labor Code section 204, including the
11 minimum wages and overtime as described above as well as meal/rest break premiums.

12 20. YSABEL has not provided Plaintiff and the other Aggrieved Employees accurate,
13 itemized wage statements. Wage statements must include all hours worked, overtime hours
14 worked, all applicable hourly rates, the correct legal name and correct address of employer entity,
15 gross wages earned, all deductions, net wages earned, reimbursement for business expenses, the
16 correct start and end of the applicable pay period, the employee ID numbers or social security
17 numbers, among other items. Labor Code § 226(a)(2). YSABEL issued wage statements that
18 inaccurately reflected total hours worked, gross and net wages earned, and the number of hours
19 worked at each hourly rate because of YSABEL's failure to properly pay wages as explained
20 herein. Labor Code §§ 226(a)(1), (2), (5), (9).

21 21. YSABEL has also violated Labor Code section 558 and engaged in business
22 practices which violate Business and Professions Code Section 17200.

23 22. Accordingly, Plaintiff now seeks civil penalties on behalf of himself and the
24 Aggrieved Employees based on Defendants' alleged violations of the California Labor Code and
25 the Wage Order.

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1 **FIRST (AND ONLY) CAUSE OF ACTION**

2 **CIVIL PENALTIES**

3 **(Lab. Code §§ 2698, et seq.)**

4 **(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all**
5 **Defendants)**

6 23. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

7 24. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
8 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

9 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
10 **THE CORRECT RATES OF PAY**

11 25. Section 2(K) of the Wage Order defines “hours worked” as “the time during which
12 an employee is subject to the control of an employer, and includes all the time the employee is
13 suffered or permitted to work, whether or not required to do so.”

14 26. Section 3 of the Wage Order states:

15 The following overtime provisions are applicable to employees 18 years of age or
16 over and to employees 16 or 17 years of age who are not required by law to attend
17 school and are not otherwise prohibited by law from engaging in the subject work.
18 Such employees shall not be employed more than eight (8) hours in any workday
19 or more than 40 in a workweek unless the employee receives one and one half
20 (1½) times such employee’s regular rate of pay for all hours worked over 40 hours
in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment
beyond eight (8) hours in any workday or more than six (6) days in any workweek
is permissible provided the employee is compensated for such overtime at not less
than:

- 21 (a) One and one-half (1½) times the employee’s regular rate of pay for all
22 hours worked in excess of eight (8) hours up to and including twelve (12)
23 hours in any workday, and for the first eight (8) hours worked on the
seventh (7th) consecutive day of work in a workweek;
- 24 (b) Double the employee’s regular rate of pay for all hours worked in excess
25 of 12 hours in any workday and for all hours worked in excess of eight (8)
hours on the seventh (7th) consecutive day of work in a workweek.
- 26 (c) The overtime rate of compensation required to be paid to a nonexempt
27 full-time salaried employee shall be computed by using the employee’s
28 regular hourly salary as one fortieth (1/40) of the employee’s weekly
salary.

1 27. Section 4 of the Wage Order requires an employer to pay non-exempt employees
2 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
3 an employer has actual or constructive knowledge that employees are working.

4 28. Labor Code section 510 states:

5 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
6 in one workday and any work in excess of 40 hours in any one workweek and the
7 first eight hours worked on the seventh day of work in any one workweek shall be
8 compensated at the rate of no less than one and one-half times the regular rate of
9 pay for an employee. Any work in excess of 12 hours in one day shall be
10 compensated at the rate of no less than twice the regular rate of pay for an
11 employee. In addition, any work in excess of eight hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the regular rate of
pay of an employee. Nothing in this section requires an employer to combine more
than one rate of overtime compensation in order to calculate the amount to be paid
to an employee for any hour of overtime work.

12 29. Labor Code section 1194 invalidates any agreement between an employer and an
13 employee to work for less than the minimum wage required under the applicable Wage Order.

14 30. Labor Code section 1197 makes it unlawful for an employer to pay an employee
15 less than the minimum wage required under the applicable Wage Order for all hours worked
16 during a payroll period.

17 31. Labor Code section 1198 makes it unlawful for an employer to employ an
18 employee under conditions that violate the Wage Order.

19 32. In conjunction, these provisions of the Labor Code require employers to pay non-
20 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
21 worked, including unrecorded hours when the employer knew or reasonably should have known
22 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.)

23 33. At all relevant times during the applicable limitations period, Defendants failed to
24 compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not
25 limited to overtime wages for all overtime hours they worked at the correct rates of pay.

26 34. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
27 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
28 failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as
required by California law.

1 **B. FAILURE TO PROVIDE MEAL PERIODS**

2 35. In relevant part, California Labor Code § 1198 states:

3 The maximum hours of work and the standard conditions of labor fixed by the
4 commission shall be the maximum hours of work and the standard conditions of
5 labor for employees. The employment of any employee for longer hours than those
6 fixed by the order or under conditions of labor prohibited by the order is unlawful.

7 36. In relevant part, In relevant part, California Labor Code § 512 states:

8 An employer shall not employ an employee for a work period of
9 more than five hours per day without providing the employee with
10 a meal period of not less than 30 minutes, except that if the total
11 work period per day of the employee is no more than six hours, the
12 meal period may be waived by mutual consent of both the
13 employer and employee.

14 An employer shall not employ an employee for a work period of
15 more than 10 hours per day without providing the employee with
16 a second meal period of not less than 30 minutes, except that if the
17 total hours worked is no more than 12 hours, the second meal
18 period may be waived by mutual consent of the employer and the
19 employee only if the first meal period was not waived.

20 37. In relevant part, Section 11 of the Wage Order states:

21 Meal Periods:

22 (A) No employer shall employ any person for a work period of
23 more than five (5) hours without a meal period of not less than
24 30 minutes, except that when a work period of not more than
25 six (6) hours will complete the day's work the meal period may
26 be waived by mutual consent of the employer and employee.
27 Unless the employee is relieved of all duty during a 30 minute
28 meal period, the meal period shall be considered an "on duty"
meal period and counted as time worked. An "on duty" meal
period shall be permitted only when the nature of the work
prevents an employee from being relieved of all duty and when
by written agreement between the parties an on-the-job paid
meal period is agreed to. The written agreement shall state that
the employee may, in writing, revoke the agreement at any
time.

(B) If an employer fails to provide an employee a meal period in
accordance with the applicable provisions of this Order, the
employer shall pay the employee one (1) hour of pay at the
employee's regular rate of compensation for each work day that

the meal period is not provided.

38. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

39. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

40. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees with all required timely 30-minute meal periods free from any work duties in accordance with the Wage Order.

41. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely and uninterrupted meal periods. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Aggrieved Employees with timely meal periods.

42. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty meal periods required by California law.

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1 **C. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

2 43. In relevant part, California Labor Code § 1198 states:

3 The maximum hours of work and the standard conditions of labor
4 fixed by the commission shall be the maximum hours of work and
5 the standard conditions of labor for employees. The employment
of any employee for longer hours than those fixed by the order or
under conditions of labor prohibited by the order is unlawful.

6 44. In relevant part, Section 12 of the Wage Order states:

7 Rest Periods:

8 (A) Every employer shall authorize and permit all employees to take
9 rest periods, which insofar as practicable shall be in the middle of
10 each work period. The authorized rest period time shall be based
11 on the total hours worked daily at the rate of ten (10) minutes net
12 rest time per four (4) hours or major fraction thereof. However, a
13 rest period need not be authorized for employees whose total daily
work time is less than three and one-half (3 ½) hours. Authorized
rest period time shall be counted as hours worked for which there
shall be no deduction from wages.

14 (B) If an employer fails to provide an employee a rest period in
15 accordance with the applicable provisions of this order, the
16 employer shall pay the employee one (1) hour of pay at the
17 employee's regular rate of compensation for each workday
that the rest period is not provided.

18 45. In relevant part, California Labor Code § 226.7 states:

19 (b) An employer shall not require an employee to work during
20 a meal or rest period mandated pursuant to an applicable
21 statute, or applicable regulation, standard, or order of the
22 Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of
Occupational Safety and Health.

23 (c) If an employer fails to provide an employee a meal period
24 or rest period in accordance with a state law, including, but
25 not limited to, an applicable statute or applicable
26 regulation, standard, or order of the Industrial Welfare
Commission, the Occupational Safety and Health
27 Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one
28 additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest

period is not provided.

46. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

47. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved Employees to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

48. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

49. At all relevant times, due to high workload, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages on workdays they failed to authorize and permit them to take 10-minute rest periods every four hours worked or major fraction thereof.

50. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved Employees to take all rest breaks required by California law.

D. FAILURE TO INDEMNIFY

51. In pertinent part, California Labor Code section 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

52. Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

53. At all relevant times during the applicable limitations period, as a condition for employment, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses. These costs include, but are not limited to, kitchen tools (including knives)

1 and use of personal cell phones to communicate with management concerning work matters.
2 However, Defendants did not reimburse Plaintiff and the others for these business expenses.

3 54. Therefore, Defendants failed to indemnify Plaintiff and the Aggrieved Employees
4 for expenditures incurred as a direct consequence of discharging their duties in violation of
5 California Labor Code sections 2800 and 2802.

6 55. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
7 Defendants maintained a policy and/practice, or lack thereof, which resulted in Defendants'
8 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
9 incurred during the course of performing their duties.

10 **E. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
11 **STATEMENTS**

12 56. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
13 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
14 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
15 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
16 each hourly rate by the employee.

17 57. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
18 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
19 the employer fails to provide accurate and complete information as required by California Labor
20 Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement
21 alone one or more of the following:

22 A. The amount of the gross wages or net wages paid to the employee during
23 the pay period or any of the other information required to be provided on the itemized wage
24 statement pursuant to California Labor Code § 226(a);

25 B. Which deductions the employer made from gross wages to determine the
26 net wages paid to the employee during the pay period;

27 C. The name and address of the employer and, if the employer is a farm labor
28 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
and address of the legal entity that secured the services of the employer during the pay period;

D. The name of the employee and only the last four digits of his or his social
security number or an employee identification number other than a social security number; and

E. The number of piece-rate units earned and the piece rate.

58. “Promptly and easily determine,” as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

59. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock (as described above).

60. Defendants’ failure to provide Plaintiff and the other Aggrieved Employees with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

61. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

F. UNTIMELY WAGES DURING EMPLOYMENT

62. Labor Code § 204 states:

- (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each

1 calendar month, on days designated in advance by the
2 employer as the regular paydays. Labor performed
3 between the 1st and 15th days, inclusive, of any calendar
4 month shall be paid for between the 16th and the 26th day
5 of the month during which the labor was performed, and
labor performed between the 16th and the last day,
inclusive, of any calendar month, shall be paid for
between the 1st and 10th day of the following month. ...

6 (b) (1) Notwithstanding any other provision of this
7 section, all wages earned for labor in excess of the normal
8 work period shall be paid no later than the payday for the
next regular payroll period.

9 (2) An employer is in compliance with the
10 requirements of subdivision (a) of Section 226
11 relating to total hours worked by the employee, if
12 hours worked in excess of the normal work period
13 during the current pay period are itemized as
14 corrections on the paystub for the next regular pay
15 period. Any corrections set out in a subsequently
issued paystub shall state the inclusive dates of
the pay period for which the employer is
correcting its initial report of hours worked.

16 (c) However, when employees are covered by a collective
17 bargaining agreement that provides different pay
18 arrangements, those arrangements shall apply to the
covered employees.

19 (d) The requirements of this section shall be deemed satisfied
20 by the payment of wages for weekly, biweekly, or
21 semimonthly payroll if the wages are paid not more than
seven calendar days following the close of the payroll
period.

22 63. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all
23 hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff
24 and the Aggrieved Employees with all meal and rest periods in compliance with California laws.
25 Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages
26 on workdays they failed to provide them with one or more meal or rest periods in compliance
27 with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime,
28 and premium wages due during employment within the time periods set by California Labor Code

1 section 204.

2 **G. UNTIMELY FINAL WAGES**

3 64. Labor Code § 201 provides that all earned and unpaid wages of an employee who
4 is discharged are due and payable immediately at the time of discharge.

5 65. Labor Code § 202 provides that all earned and unpaid wages of an employee who
6 quits after providing at least 72-hours notice before quitting are due and payable at the time of
7 quitting and that all earned and unpaid wages of an employee who quits without providing at least
8 72-hours notice before quitting are due and payable within 72 hours.

9 66. By failing to pay earned minimum and premium wages to Plaintiff and the
10 Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in
11 violation of Labor Code § 201 or § 202.

12 67. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
13 and the Aggrieved Employees all of their earned and unpaid wages (described above) have been
14 willful in that, at all relevant times, Defendants have deliberately maintained policies and
15 practices that violate the requirements of the Labor Code and the Wage Order, even though at all
16 relevant times, they have had the ability to comply with those legal requirements.

17 **H. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

18 68. Labor Code § 1174 states:

19 Every person employing labor in this state shall:

20 ...

21 (c) Keep a record showing the names and addresses of all employees
employed and the ages of all minors.

22 (d) Keep, at a central location in the state or at the plants or establishments
23 at which employees are employed, payroll records showing the hours
24 worked daily by and the wages paid to, and the number of piece-rate
25 units earned by and any applicable piece rate paid to, employees
26 employed at the respective plants or establishments. These records shall
27 be kept in accordance with rules established for this purpose by the
28 commission, but in any case shall be kept on file for not less than three
years. An employer shall not prohibit an employee from maintaining a
personal record of hours worked, or, if paid on a piece-rate basis, piece-
rate units earned.

1 69. Labor Code § 1174.5 states:

2 Any person employing labor who willfully fails to maintain the records required
3 by subdivision (c) of Section 1174, or to allow any member of the commission
4 or employees of the division to inspect records pursuant to subdivision (b) of
5 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

6 70. Section 7 of the Wage Order states:

7 (A) Every employer shall keep accurate information with respect to
8 each employee including the following:

9 (1) Full name, home address, occupation and social security
10 number.

11 (2) Birth date, if under 18 years, and designation as a minor.

12 (3) Time records showing when the employee begins and ends
13 each work period. Meal periods, split shift intervals and
14 total daily hours worked shall also be recorded. Meal
15 periods during which operations cease and authorized rest
16 periods need not be recorded.

17 (4) Total wages paid each payroll period, including value of
18 board, lodging, or other compensation actually furnished to
19 the Employee.

20 (5) Total hours worked in the payroll period and applicable
21 rates of pay. This information shall be made readily
22 available to the employee upon reasonable request.

23 (6) When a piece rate or incentive plan is in operation, piece
24 rates or an explanation of the incentive plan formula shall
25 be provided to employees. An accurate production record
26 shall be maintained by the employer.

27 71. Labor Code § 1198 prohibits employers from employing their employees under
28 conditions prohibited by the Wage Order.

29 72. On information and belief, Defendants have willfully failed to maintain the records
30 required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned
31 for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff
32 and the Aggrieved Employees.

33 73. Accordingly, Plaintiff seeks an award of civil penalties against the Defendants on

1 behalf of himself and all of the other Aggrieved Employees as follows: (1) \$500 for each
2 aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code
3 section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor
4 Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per
5 pay period (penalties set by Labor Code section 2699(f)(2)).

6 **I. CIVIL PENALTIES SOUGHT**

7 74. During the applicable time period, Defendants violated California Labor Code
8 §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 1174, 1194, 1197, 1198, 2802 and
9 related Labor Code statutes.

10 75. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
11 behalf of themselves and other current or former employees, to bring a civil action to recover civil
12 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

13 76. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
14 Employees are entitled to recover civil penalties for each of the Defendants' violations of
15 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 1174, 1194,
16 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

17 A. For violations of California Labor Code § 204, one hundred dollars
18 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
19 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
20 (penalty amounts established by California Labor Code § 210).

21 B. For violations of California Labor Code § 226, two hundred fifty dollars
22 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
23 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

24 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
25 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
26 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
27 each pay period for which the employee was underpaid (penalty amounts established by
28 California Labor Code § 558).

1 D. For violations of California Labor Code § 1174, five hundred dollars
2 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established
3 by Labor Code § 1174.5).

4 E. For violations of California Labor Code § 1197, one hundred dollars
5 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
6 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
7 (regardless of whether the initial violations were intentionally committed) (penalty amounts
8 established by California Labor Code § 1197.1).

9 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
10 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for
11 each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
12 period for each subsequent violation (penalty amounts established by California Labor Code
13 § 2699(f)(2)).

14 **J. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

15 77. Plaintiff has complied with the procedures for bringing suit specified in California
16 Labor Code § 2699.3. By letter dated February 1, 2024, Plaintiff gave written notice by certified
17 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific
18 provisions of the California Labor Code alleged to have been violated, including the facts and
19 theories to support the alleged violations. The LWDA has failed to take action in response within
20 65 days of Plaintiff’s notice dated February 1, 2024.

21 78. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
22 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
23 connection with their claims for civil penalties.

24 **PRAYER FOR RELIEF**

25 79. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees,
26 prays for relief and judgment against Defendants as follows:

- 27 A. Civil penalties;
28 B. Costs of suit;
C. Reasonable attorneys’ fees; and

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D. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

Dated: April 10, 2024

MM LAW, APC

By: Maralle Messrelian
Maralle Messrelian, Esq.
Attorney for Plaintiff,
GILBER SANTIAGO LOPEZ
HERNANDEZ, and all others
similarly situated