

Brian D. Chase, Esq. (SBN 164109)
bchase@bisnarchase.com
Ian M. Silvers, Esq. (SBN 247416)
isilvers@bisnarchase.com
BISNAR|CHASE LLP
1301 Dove Street, Suite 120
Newport Beach, California 92660
Telephone: (949) 752-2999
Facsimile: (949) 752-2777

Richard C. Alpers, Esq. (SBN 254646)
rca@alperslawgroup.com
ALPERS LAW GROUP, INC
P.O. Box 154
Aptos, CA 95001
Telephone: (831) 240-0490 (831) 240-0490
Facsimile: (855) 870-1129

Attorneys for Plaintiff and Aggrieved Employees

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

JUANA JIMENEZ on behalf of the State
of California for Aggrieved Employees,

Plaintiff,

vs.

CB HARVESTING, LLC, a California
Limited Company; and DOES 1 through
50, inclusive,

Defendants.

Case No. 24CV004656

**COMPLAINT FOR RECOVERY OF CIVIL
PENALTIES PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT**

1. **PAGA Civil Penalties for Failure to Pay Wages For All Hours Worked (Cal. Lab. Code §§ 204, 218, 226.2, 1194, 1194.2);**
2. **PAGA Civil Penalties for Failure to Pay Overtime Wages (Cal. Lab. Code §§ 204, 210, 218, 226.2, 510, 1194);**
3. **PAGA Civil Penalties for Failure to Provide Timely and Compliant Meal Periods and Rest Breaks (Cal. Lab. Code §§ 226.7 and 512)**
4. **PAGA Civil Penalties for Failure to Provide Accurate Wage Statements (Cal. Lab. Code §§ 226, 1174, 1174.5); and**
5. **PAGA Civil Penalties for Waiting Time**

1 1. Plaintiff JUANA JIMENEZ (“Plaintiff”), brings this action not in her individual
2 capacity but under PAGA on behalf of the State of California for Aggrieved Employees (as defined
3 below) against Defendants CB HARVESTING, LLC and DOES 1 through 50 (collectively,
4 “Defendants”), and allege as follows:

5
6 **I. INTRODUCTION AND FACTUAL BACKGROUND**

7 2. Plaintiff brings this action pursuant to PAGA for, among other things: (a)
8 nonpayment of wages (including minimum wages, regular wages, and overtime wages, proper
9 piece rate wages); (b) non-complaint meal periods and rest breaks; (c) failure to provide
10 accurate wage statements; and (d) for failure to pay all wages due upon termination of
11 employment.

12 3. On August 30, 2024, Plaintiff provided written notice by certified mail to the
13 LWDA and to Defendants of the specific provisions of the California Labor Code alleged to
14 have been violated, including the facts and theories to support the alleged violations.

15 4. During the PAGA Period starting one year and 65 days prior to the filing of this
16 Complaint (plus any tolling) and continuing through trial (“PAGA Period”), Defendants have and
17 continue to employ non-exempt employees.

18 5. Plaintiff seeks to recover civil penalties for all non-exempt employees who worked
19 for Defendant in California during the PAGA Period who incurred wage and hour violations and
20 losses as hereinafter described. (“Aggrieved Employees”)

21 6. Labor Code § 1198 provides: “The maximum hours of work and the standard
22 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
23 conditions of labor for employees. The employment of any employee for longer hours than those
24 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

25 7. In accordance with its power under section 1198, the Industrial Welfare
26 Commission adopted Wage Orders prescribing the minimum wages, maximum hours, and standard
27 conditions of employment for employees in this state.
28

1 8. Aggrieved Employees were regularly not provided with all compliant meal
2 periods to which they were entitled, including for a second meal period. This includes that
3 Defendants required them to regularly work through meal periods, such as when they had to
4 walk for several minutes to a designated area for the meal periods and back to the field. This
5 time was included in their alleged meal period time, effectively shortening it and they were not
6 paid for this walking time. This and Defendant's acts of control over employees, resulted in
7 interrupted meal periods that were not sufficiently long to comply with the law or a complete
8 lack of a meal period, but no compliant meal period premiums were paid. Defendants were
9 well aware of this, but Aggrieved Employees still had 30 minutes deducted from their daily
10 time for each meal period, despite the fact that they were working for part of or all of their meal
11 period and meal period premiums were not paid. The same happened for second meal periods.
12 Based on the hours worked, the time spent working during meal periods (for which they were
13 not paid) would be overtime hours, and result in not only overtime wages owed but also
14 minimum wage and liquidated damages.

15 9. Furthermore, meal periods (including second meal periods) were regularly
16 untimely or not taken at all, including because of the press of business and pressure of
17 Defendants to complete tasks. Again, compliant meal period premiums were not paid.

18 10. Additionally, Aggrieved Employees were not authorized and permitted lawful
19 rest breaks as required. Aggrieved Employees were not permitted or authorized to take these,
20 and in fact did not take them, due to, among other things, the press of business and Defendants'
21 requirements. Defendants were aware of this but did not pay Aggrieved Employees a complaint
22 rest break premium.

23 11. As such, Aggrieved Employees were not authorized and permitted lawful meal
24 periods and rest breaks and were not provided with one hour's wages in lieu thereof in violation of,
25 among others, California Labor Code §§ 512 and 226.7 and applicable IWC Wage Orders. This
26 has also resulted in a failure to pay for all wages for hours worked during meal periods. The
27 wages include regular time wages, overtime, and minimum wages (with its resulting liquidated
28

1 damages).

2 12. Aggrieved Employees were not authorized and permitted lawful meal periods and
3 rest breaks and were not provided with one hour's wages in lieu thereof, in one or more of the
4 following manners.

- 5 a. they were regularly not authorized and permitted full and timely thirty-minute
6 meal periods for workdays in excess of five and/or ten hours and were not
7 compensated one hour's wages in lieu thereof, all in violation of, among others,
8 Labor Code §§ 226.7, 512, and applicable IWC Wage Orders;
9 b. they were regularly not authorized and permitted full and timely ten-minute rest
10 breaks for workdays in excess of 3.5 and/or 6 and/or 10 hours and were not
11 compensated one hour's wages in lieu thereof, all in violation of, among others,
12 Labor Code §§ 226.7 and applicable IWC Wage Orders;
13 c. they were required to work through their daily meal period(s) and rest break(s);
14 d. they were required to work longer than five hours before being allowed to take a
15 meal period;
16 e. they were required to work longer than four hour or major portion thereof before
17 being allowed to take a rest period; and
18 f. they were severely restricted in their ability to take a meal period or rest break.
19

20 13. During the relevant time period, Defendants did not authorize and permit lawful
21 meal periods and rest breaks for Aggrieved Employees. This was based on policies (or lack
22 thereof) as well as their practices that applied to all Aggrieved Employees.

23 14. On information and belief, Aggrieved Employees did not waive meal periods
24 during the PAGA period.

25 15. In addition to the above violations, Aggrieved Employees were paid a piece rate
26 for their work . However, they were not properly paid separately for all rest breaks and all non-
27 productive time, including that it was not paid at the correct rate, as required by *Bluford v. Safeway*
28 (2013) 216 Cal.App.4th 864 and Labor Code § 226.2. Since Aggrieved Employees were not paid

1 for this time, they were not paid all wages owed (including overtime, regular rate wages, minimum
2 wage and resulting liquidated damages)

3 16. Additionally, Defendants failed to properly compensate Aggrieved Employees
4 at the regular rate of pay when accounting for the piece rate compensation. This results in a
5 failure to pay for all hours properly, including failing to pay for overtime hours at the correct
6 rate

7 17. As addressed above, during the course of Aggrieved Employees' employment,
8 Defendants also required them to work through all or part of their meal periods. This is separate
9 from any work off the clock before/after their shifts, including but not limited to time spent on
10 the required company bus/vehicle that was not paid. These additional hours would have
11 included overtime hours.

12 18. Despite working overtime hours, Defendants did not pay Aggrieved Employees
13 for all of those hours, including as noted above. They were not paid all wages, or wages at the
14 proper rate (including accounting for piece rate pay), for this time as required by Labor Code
15 §§ 510, 860-862 and 1194 in one or more of the following manners:
16

- 17 a. By failing to pay for all hours worked;
- 18 b. By failing to pay for all hours worked at the appropriate rate (including when
19 accounting for piece rate pay);
- 20 c. By deducting time for meal periods during which employees were actually
21 working;
- 22 d. By arbitrarily reducing hours worked;
- 23 e. Through failure to maintain proper records; and
- 24 f. Through other methods to be discovered.

25 19. As a result of Defendants' illegal and unlawful conduct as set forth above,
26 Defendants have knowingly and intentionally failed to comply with the itemized wage-statement
27 provisions and have failed to pay the damages and penalties for said violations as required by
28 California law, including the failure to include gross and net wages earned, total hours worked and

1 the applicable rate of pay, meal period and rest break premiums (including at the correct rate). They
2 also failed to properly list rest breaks and non-productive time separately list the number of
3 piece-rate units earned and any applicable piece rate. Additionally, they failed to record hours
4 and meal periods and maintain accurate payroll in violation of California Labor Code §§ 226 and
5 1198, as well as the Industrial Wage Order.

6 20. Furthermore, Defendants failed to timely pay for all wages owed to Aggrieved
7 Employees upon termination of employment. As detailed above, Aggrieved Employees were
8 not provided proper meal periods and/or rest breaks and were not provided with a one hour
9 penalty in lieu thereof, and were not paid all wages owed.

10 21. Plaintiff, bring this action pursuant to California Labor Code including §§ 201-
11 203, 204, 210, 218, 226, 226.2, 226.3, 226.7, 510, 512, 558, 558.1, 860-862, 1174, 1194,
12 1194.2, 1197, 1197.1, and 1198, and the applicable Industrial Welfare Commission Wage
13 Orders (“Wage Orders”), seeking unpaid wages (including minimum, regular and overtime
14 wages), unpaid meal period and rest break premiums (including at the correct rate), penalties,
15 injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

17 II. THE PARTIES

18 A. The Plaintiff

19 22. Plaintiff is a current resident of Salinas County and has worked for Defendant during
20 the PAGA period. She will serve as an adequate, typical and active participant and is an Aggrieved
21 Employee. Plaintiff was employed by Defendants and was not paid for all hours worked (including
22 for overtime and at the correct rate, as well as not properly paid separately for rest breaks or based
23 on piece rate), was not provided all complaint meal periods and were not authorized and permitted
24 all and rest breaks during the PAGA period.

25 23. Plaintiff reserves the right to seek leave to amend this complaint to add new
26 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
27 *American Savings and Loan Association*, 5 Cal. 3d 864, 872 (1971), and other applicable law.
28

1 **B. The Defendants**

2 24. CB HARVESTING, LLC is a company in Salinas, California that produces fresh
3 berries.

4 25. Defendants employed Aggrieved Employees in California. The illegal and unlawful
5 policies and practices described herein were performed by Defendants in California.

6 26. Defendant CB HARVESTING, LLC was and is, upon information and belief, a
7 California Limited Company with the capacity to sue and to be sued, and doing business, in the
8 State of California, and doing business in this county. At all times hereinafter mentioned,
9 Defendant CB HARVESTING, LLC was an employer whose employees were engaged
10 throughout this county and the State of California.

11 27. The true names and capacities, whether individual, corporate, associate or
12 otherwise, of defendants DOES 1 through 50 are unknown to Plaintiff, who therefore sues these
13 defendants by fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff further alleges
14 that each of these fictitious defendants is in some manner responsible for the acts and occurrences
15 herein set forth. Plaintiff will amend this Complaint to show these defendants' true names and
16 capacities when ascertained, as well as the manner in which each fictitious defendant is responsible.

17 28. At all times mentioned herein, the Defendants named as DOES 1-50, inclusive,
18 and each of them, were residents of, doing business in, availed themselves of the jurisdiction
19 of, and/or injured Plaintiff and employees in the State of California.

20 29. At all times mentioned herein, each Defendant was the agent, servant, or
21 employee of the other Defendants and in acting and omitting to act as alleged herein did so
22 within the course and scope of that agency or employment.

23 **III. JURISDICTION AND VENUE**

24 30. The unlawful acts alleged herein arise under the laws of the State of California
25 and have a direct effect on Aggrieved Employees who work and/or performed work within the
26 State of California. below exceeds the minimal jurisdictional limits of the Superior Court and
27 will be established according to proof at trial. The Monterey County Superior Court has
28

1 personal jurisdiction over Defendants because: (1) they operate within this County; (2) are
2 qualified with the California Secretary of State to do business and is doing business in
3 California, and in this County; and (3) because many of the acts complained of occurred and
4 arose in California, and specifically, this County. Additionally, each is either a citizen of
5 California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of
6 the California market so as to render the exercise of jurisdiction over it by the California courts
7 consistent with traditional notions of fair play and substantial justice.

8 31. Based on information and belief, Plaintiff alleges that this entire action arises
9 solely under the laws of the State of California and applicable regulations of the health, safety
10 and wages of the employees residing in the State of California. Plaintiff alleges, on information
11 and belief, that no federal question is raised. Moreover, PAGA civil penalty actions are not
12 subject to federal jurisdiction.

13 32. Venue as to Defendants is proper in this judicial district, pursuant to Code of
14 Civil Procedure § 395, as one or more of the named Defendants reside, transact business, or
15 have offices in this county and the acts and omissions alleged herein took place in this county.

16 33. California Labor Code sections 2699 et seq., (the “PAGA”), authorizes aggrieved
17 employees to sue directly for various civil penalties under the California Labor Code.

18 34. Plaintiff timely provided notice to the California Labor Workforce Development
19 Agency (“LWDA”) and to Defendants, pursuant to California Labor Code section
20 2699.3(a). Therefore, he may proceed with this action for penalties pursuant to California Labor
21 Code § 2699, et seq.

22 35. Pursuant to PAGA, Plaintiff has given notice to the LWDA of the Labor Code
23 violations alleged in this Complaint. The Complaint seeks all recoverable penalties for Labor
24 Code violations as permitted and proscribed by the PAGA. This cause of action includes
25 allegations and remedies available under Labor Code §§ 2699, 2699.5, and 2933.3, among
26 others. *See* Cal. Labor Code § 2933.3(a)(2)(C) (“Notwithstanding any other provisions of law,
27
28

1 a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
2 under this part within 65 days of the time periods specified in this part.”)

3 36. PAGA permits recovery of civil penalties for the violation(s) of the Labor Code
4 sections enumerated in Labor Code § 2699.5.

5 37. At all times herein set forth, PAGA was applicable to Aggrieved Employees’
6 employment.

7 38. At all times herein set forth, PAGA provides that any provision of law under the
8 California Labor Code that provides for a civil penalty to be assessed and collected by the
9 LWDA for violations of the California Labor Code may, as an alternative, be recovered through
10 a civil action brought by an aggrieved employee on behalf of Aggrieved Employees pursuant
11 to procedures outlined in California Labor Code § 2699.3.

12 39. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
13 employee,” who is any person that was employed by the alleged violator and against whom one
14 or more of the alleged violations was committed.

15 40. Aggrieved Employees are as defined by California Labor Code § 2699(c) in that
16 they are all current or former employees of Defendants who are or were employed by
17 Defendants, and one or more of the alleged violations were committed against them.

18 41. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved
19 employee may pursue a civil action arising under PAGA after the following requirements have
20 been met:
21

22 a. The aggrieved employee shall give written notice (“Employee’s Notice”) to the
23 LWDA and by certified mail to the employer of the specific provisions of the
24 California Labor Code alleged to have been violated, including the facts and theories
25 to support the alleged violations.

26 b. The LWDA shall provide notice (“LWDA Notice”) to the employer and the
27 aggrieved employee by certified mail that it does not intend to investigate the alleged
28 violation within sixty (60) calendar days of the postmark date of the Employee’s

1 Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided
2 within sixty-five (65) calendar days of the postmark date of the Employee's Notice,
3 the aggrieved employee may commence a civil action pursuant to California Labor
4 Code § 2699 to recover civil penalties in addition to any other penalties to which the
5 employee may be entitled.

6 42. Plaintiff has satisfied the administrative prerequisites under California Labor
7 Code § 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies,
8 for violations of California Labor Code including sections §§ 201-203, 204, 210, 218, 226,
9 226.2, 226.7, 226.3, 510, 512, 558, 558.1, 860-862, 1174, 1194, 1194.2, 1197, 1197.1, and
10 1198, and Industrial Welfare Orders including, but not limited to, Section 7.

11 43. Defendants' conduct, as alleged herein, violates numerous sections of the
12 California Labor Code including but not limited to the following:

- 13 a. Violation of Labor Code § 226(a) and 226.3 for failing to provide accurate wage
14 statements, as herein alleged.
- 15 b. Violation of Labor Code §§ 201, 202 and 203 for failure to timely pay all wages
16 owed upon termination, as herein alleged.
- 17 c. Violation of Labor Code § § 204, 210, 226.2 and 558 for failing to pay all wages
18 owed, as herein alleged.
- 19 d. Violation of Labor Code §§ 226.2, 510 and 860-862 for failing to pay all
20 overtime wages, as herein alleged.
- 21 e. Violation of Labor Code §§ 558, 1194, 1194.2, 1197 and 1197.1 for failing to
22 pay minimum wage.
- 23 f. Violation of Labor Code § § 226.7 and 512 for failing to provide compliant meal
24 periods and authorize and permit compliant rest breaks.
- 25 g. Violation of Labor Code § 1174, 1198 and Industrial Welfare Orders including,
26 but not limited to, Section 7, for failure to maintain records.
27
28

1 h. Violation of Labor Code §1198 for failure to comply with standard conditions
2 of labor.

3 i. Violation of Labor Code §558.1.

4 44. Pursuant to California Labor Code §§ 2699(a), 2699.3 and 2699.5, Aggrieved
5 Employees are entitled to recover civil penalties against Defendants, in addition to other
6 remedies, for violations of California Labor Code §§ 201-203, 204, 210, 218, 226, 226.2, 226.7,
7 226.3, 510, 512, 558, 558.1, 860-862, 1174, 1194, 1194.2, 1197, 1197.1, and 1198 and Industrial
8 Welfare Orders including, but not limited to, Section 7.

9 45. Further Plaintiff is entitled to seek and recover reasonable attorneys' fees and
10 costs pursuant to California Labor Code § 2699 and any other applicable statute.

11 **IV. CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 **(PAGA Civil Penalties For Failure to Pay Wages For All Hours Worked)**

14 **(Labor Code §§ 204, 210, 218, 226.2, and 1194, 1194.2)**

15 **(Brought by Plaintiff on Behalf of the State of California for Aggrieved Employees**

16 **Against All Defendants)**

17 47. Plaintiff realleges and incorporates by this reference each of the preceding and
18 foregoing paragraphs as if fully set forth herein.

19 48. At all times herein relevant, Labor Code §§ 204, 218, 226.2, and 1194.2, and
20 the applicable Wage Orders were in full force and effect. Labor Code § 204 requires employers
21 to pay all wages earned by any employee due and payable twice during each calendar month.

22 49. Pursuant to Labor Code § 218, Plaintiff may bring a civil action for such
23 violations directly against the employer.

24 50. At all times herein relevant, the Wage Orders and applicable California Code of
25 Regulations have applied and continue to apply to Aggrieved Employees' employment with
26 Defendants, which state that "every employer shall pay to each employee wages. . . for all hours
27 worked."

28 51. "Hours worked" is defined as "the time during which an employee is subject to

1 the control of an employer and includes all the time the employee is suffered or permitted to
2 work, whether or not required to do so.”

3 52. Labor Code §226.2 provides that employees paid a piece rate shall be separately
4 compensated for rest and recovery time as well as non-productive time, and that this shall be
5 paid at the higher of (i) An average hourly rate determined by dividing the total compensation for
6 the workweek, exclusive of compensation for rest and recovery periods and any premium
7 compensation for overtime, by the total hours worked during the workweek, exclusive of rest and
8 recovery periods and (ii) The applicable minimum wage.

9 53. At all times pertinent hereto, Labor Code § 1194 provided: “Notwithstanding
10 any agreement to work for a lesser wage, any employee receiving less than the legal minimum
11 wage or the legal overtime compensation applicable to the employee is entitled to recover in a
12 civil action the unpaid balance of the full amount of this minimum wage or overtime
13 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.”

14 54. At all times pertinent hereto, Labor Code § 1194.2 provides for the recovery of
15 prejudgment interest at the rate specified in Civil Code § 3289.

16 55. Labor Codes §§ 218.5, 218.6, 1194(a) and 1194.2(a) provide that an employee
17 who has not been paid the legal wage may also recover attorney’s fees and costs of suit, as well
18 as liquidated damages and interest thereon.

19 56. At all relevant times herein, Defendants were required to compensate Aggrieved
20 Employees for all hours worked pursuant to Labor Code § 1194.

21 57. By uniformly failing to track and record all of the hours worked Aggrieved
22 Employees, including requiring them to work off the clock, Defendants were able to skim wages
23 from employees by not paying them a separate hourly wage for each and every hour worked as
24 required by California law. Through this unlawful and illegal policy and practice, Defendants
25 have failed to pay Aggrieved Employees all wages owed to them.

26 58. By uniformly failing to track and record all of the hours worked by Aggrieved
27 Employees, requiring them to work off the clock, not paying at the correct hourly rate
28 (including related to piece rate wages), not properly paying for non-productive time and rest

1 breaks, requiring off the clock work and deducting a full thirty minutes for meal periods when
2 a shorter time had been taken (or no meal period at all), Defendants were able to skim wages
3 from employees by not paying them a separate hourly wage for each and every hour worked as
4 required by California law. Through this unlawful and illegal policy and practice, Defendants
5 have failed to Aggrieved Employees all wages owed to them.

6 59. Plaintiff is informed and believes and based thereupon alleges that the result of
7 the unlawful and illegal policy and practice caused the nonpayment of minimum and regular
8 wages to all Aggrieved Employees (and resulting civil penalties), in an amount according to
9 proof at trial.

10 60. Consequently, Plaintiff, as a representative of the State of California for Aggrieved
11 Employees, seeks to recover civil penalties pursuant to the PAGA for the alleged violations in an
12 amount according to proof and subject to Court approval.

13 61. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant
14 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
15 enforcement of California labor laws and applicable regulations is determined to be in the public
16 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
17 according to proof and subject to Court approval.

18 **SECOND CAUSE OF ACTION**

19 **(PAGA Civil Penalties For Failure to Pay Overtime Wages)**

20 **(Labor Code §§ 204, 210, 218, 226.2, 510 and 1194)**

21 **(Brought by Plaintiff on Behalf of the State of California for Aggrieved Employees**

22 **Against All Defendants)**

23 62. Plaintiff realleges and incorporates by this reference each of the preceding and
24 foregoing paragraphs as if fully set forth herein.

25 63. Aggrieved Employees were at all times subject to California's laws and
26 regulations protecting the employees' entitlement to be paid and presumption to be paid
27 overtime wages for requisite hours worked beyond a normal workday or a normal work week,
28 as specified, without limitation, by Cal. Labor Code §§ 510, 860-862, 1194 and the Wage

1 Orders.

2 64. California law requires employers, such as Defendants, to pay overtime
3 compensation to all nonexempt employees for all hours worked over 40 hours per week or over
4 8 hours per day. Labor Code § 204 establishes the fundamental right of all employees in the
5 State of California to be paid wages, including straight time and overtime, in a timely fashion
6 for their work. This precludes any waiver for unpaid due and owing wages that remain unpaid
7 at the time of separation.

8 65. Labor Code § 204 requires employers to pay all wages earned by any employee
9 due and payable twice during each calendar month.

10 66. At all times herein relevant, the Wage Orders and applicable California Code of
11 Regulations have applied and continue to apply to Aggrieved Employees' employment with
12 Defendants, which state that "every employer shall pay to each employee wages. . . for all hours
13 worked."

14 67. "Hours worked" is defined as "the time during which an employee is subject to
15 the control of an employer and includes all the time the employee is suffered or permitted to
16 work, whether or not required to do so."

17 68. At all times pertinent hereto, Labor Code § 1194 provided: "Notwithstanding
18 any agreement to work for a lesser wage, any employee receiving less than the legal minimum
19 wage or the legal overtime compensation applicable to the employee is entitled to recover in a
20 civil action the unpaid balance of the full amount of this minimum wage or overtime
21 compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

22 69. At all relevant times herein, Defendants were required to compensate Aggrieved
23 Employees for all hours worked pursuant to Labor Code § 1194.

24 70. Labor Code § 510(a) states in pertinent part: "Any work in excess of eight hours
25 in one workday and any work in excess of 40 hours in any one workweek ... shall be
26 compensated at the rate of no less than one and one-half times the regular rate of pay for any
27 employee." In addition, Labor Code § 510(a) provides that "[a]ny work in excess of 12 hours
28 in one day shall be compensated at the rate of no less than twice the regular rate of pay for an

1 employee.”

2 71. For agricultural workers, the rules were being phased in and as a result, in 2019
3 overtime was owed after 9.5 hours in a day and 55 hours in a week, in 2020 it was owed after
4 9 hours in a day or 50 hours in a week, and in 2021 it is owed after 8.5 hours in a day or 45
5 hours in a week. Labor Code §§860-862.

6 72. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than
7 the hours set by the IWC.

8 73. As set forth above, Aggrieved Employees were entitled to be paid overtime
9 compensation for all overtime hours worked. They were regularly and consistently required to
10 work overtime during the PAGA Period, but were not paid at all and/or at the correct rate of
11 pay.

12 74. Throughout the PAGA Period, Aggrieved Employees worked in excess of 8
13 hours in a workday and/or 40 hours in a workweek.

14 75. During the PAGA Period, Defendants did not pay Aggrieved Employees
15 overtime pay for all overtime hours worked and/or at the correct overtime rate of pay.

16 76. By the course of conduct set forth above, Defendants failed to pay all such
17 wages. Plaintiff is informed and believes and based thereupon alleges that the result of the
18 unlawful and illegal policy and practice caused the nonpayment such wages to all Aggrieved
19 Employees (and resulting civil penalties), in an amount according to proof at trial.

20 77. Consequently, Plaintiff, as a representative of the State of California for
21 Aggrieved Employees, seeks to recover civil penalties pursuant to the PAGA for the alleged
22 violations in an amount according to proof and subject to Court approval.

23 78. Plaintiff will also seek recovery of attorneys’ fees and litigation expenses pursuant
24 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
25 enforcement of California labor laws and applicable regulations is determined to be in the public
26 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
27 according to proof and subject to Court approval.
28

1 **THIRD CAUSE OF ACTION**

2 **(PAGA Civil Penalties For Failure to Provide Compliant Meal Periods and Rest Breaks)**

3 **(Labor Code §§ 226.7, 512, and Industrial Wage Order)**

4 **(Brought by Plaintiff on Behalf the State of California for Aggrieved Employees**

5 **Against All Defendants)**

6 79. Plaintiff realleges and incorporates by this reference each of the preceding and
7 foregoing paragraphs as if fully set forth herein.

8 80. Labor Code § 226.7(b) provides that “[a]n employer shall not require an employee
9 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
10 applicable regulation, standard, or order of the [IWC] ...”

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

16 82. Labor Code § 512(a) further provides that “[a]n employer may not employ an
17 employee for a work period of more than 10 hours per day without providing the employee with a
18 second meal period of not less than 30 minutes, except that if the total hours worked is no more than
19 12 hours, the second meal period may be waived by mutual consent of the employer and the
20 employee only if the first meal period was not waived.”

21 83. Labor Code § 516 provides that the IWC may adopt or amend working condition
22 orders with respect to meal periods for any workers in California consistent with the health and
23 welfare of those workers.

24 84. The Wage Order provides that “[u]nless the employee is relieved of all duty during
25 a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted
26 as time worked.” “An ‘on duty’ meal period shall be permitted only when the nature of the work
27 prevents an employee from being relieved of all duty and when by written agreement between the
28

1 parties an on-the-job paid meal period is agreed to. The written agreement shall state that the
2 employee may, in writing, revoke the agreement at any time.”

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

7 86. The Aggrieved Employees consistently worked over 5 hours per shift and therefore
8 were entitled to a meal period of not less than 30 minutes prior to exceeding 5 hours of work.

9 87. In addition, the Aggrieved Employees worked over 10 hours per shift and therefore
10 were entitled to a second meal period of not less than 30 minutes prior to exceeding 10 hours of
11 work.

12 88. Throughout the PAGA Period, Defendants failed to consistently allow and provide
13 the meal periods required by applicable California law, including the Wage Orders. Aggrieved
14 Employees regularly worked a full day and did not receive proper meal periods (as detailed above).

15 89. Defendants failed to provide Aggrieved Employees compliant meal periods as
16 required by law or compensate them at one hour of “premium wage” at the employee’s regular rate
17 of pay for each day that a meal period was not provided or otherwise compliant with California law.

18 90. The Aggrieved Employees did not waive their meal periods by mutual consent with
19 Defendants or otherwise.

20 91. The Aggrieved Employees did not enter into any written agreement with Defendants
21 agreeing to an on-the-job paid meal period.

22 92. Similarly, Aggrieved Employees were entitled to be authorized and permitted paid,
23 duty-free, uninterrupted 10-minute rest break for every four hours worked (or every major fraction
24 thereof)

25 93. Aggrieved Employees regularly worked shifts in excess of 3.5 hours without being
26 permitted the opportunity to take a paid rest break of at least ten (10) consecutive minutes,
27 uninterrupted, relieved of all job duties; worked more than six (6) hours at a time without being
28

1 allowed a second paid ten (10) consecutive minute, uninterrupted, rest break, relieved of all job
2 duties; worked shifts in excess of ten hours without being allowed a third paid ten (10) consecutive
3 minute, uninterrupted, rest break, relieved of all job duties.

4 94. Defendants failed to authorize and permit Aggrieved Employees to take adequate
5 rest breaks as required by law or compensate them at one hour of “premium wage” at the employee’s
6 regular rate of pay for each day that a rest break was not authorized, permitted or otherwise
7 compliant with California law.

8 95. Defendants failed to comply with the required meal period and rest break laws
9 established by Labor Code §§ 226.7, 512, 516 and the Wage Orders.

10 96. Therefore, Aggrieved Employees were effectively deprived of their legally required
11 meal-and-rest periods.

12 97. Consequently, Plaintiff, as a representative of the State of California for Aggrieved
13 Employees, seeks to recover civil penalties pursuant to the PAGA for the alleged violations in an
14 amount according to proof and subject to Court approval.

15 98. Plaintiff will also seek recovery of attorneys’ fees and litigation expenses pursuant
16 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
17 enforcement of California labor laws and applicable regulations is determined to be in the public
18 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
19 according to proof and subject to Court approval.
20

21 **FOURTH CAUSE OF ACTION**

22 **(PAGA Civil Penalties for Failure to Provide Accurate Wage Statements)**

23 **(Labor Code §§ 226, 226.2, 226.3, 1174, 1174.5, and Industrial Wage Order)**

24 **((Brought by Plaintiff on Behalf of the State of California for Aggrieved Employees**

25 **Against All Defendants)**

26 99. Plaintiff realleges and incorporates by this reference each of the preceding and
27 foregoing paragraphs as if fully set forth herein.

28 100. Defendants knowingly and intentionally failed to provide accurate, itemized wage

1 statements including, *inter alia*, total hours worked, gross and net wages earned, all applicable
2 hourly rates in effect during the pay period and the corresponding number of hours worked at each
3 hourly rate by the employee in accordance with Labor Code § 226(a).

4 101. Labor Code § 226(a) states, in pertinent part, that “[e]very employer shall,
5 semimonthly or at the time of each payment of wages, furnish each of his or his employees, either
6 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when
7 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
8 gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
9 earned and any applicable piece rate, ..., (5) net wages earned, (6) the inclusive dates of the period
10 for which the employee is paid ..., and (9) all applicable hourly rates in effect during the pay period
11 and the corresponding number of hours worked at each hourly rate by the employee ...”

12 102. Labor Code section 226(a) is a statute listed under Labor Code section 2699.5 for
13 which civil penalties may be recovered under the default civil penalty scheme outlined in Labor
14 Code section 2699(f)(2), cited above.

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

22 104. Labor Code § 226.2(a)(2) states: “The itemized statement required by subdivision
23 (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state
24 the following, to which the provisions of Section 226 shall also be applicable: (A) The total hours
25 of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for
26 those periods during the pay period” and (B) ...”the total hours of other nonproductive time, as
27 determined under paragraph (5), the rate of compensation, and the gross wages paid for that time
28

1 during the pay period.”

2 105. From the outset, Defendants have failed to comply with Labor Code § 226 and
3 226.2. As a matter of common policy and practice, Defendants did not include the non-exempt
4 employees’ “corresponding number of hours worked at each hourly rate by the employee” and “the
5 number of piece-rate units earned and any applicable piece rate”. In addition, the wage statements
6 distributed to Aggrieved Employees did not contain all wages earned (including minimum wage,
7 overtime and meal period and rest break premiums at the correct rate and rest and recovery/non-
8 productive time listed separately at the correct rate and amount of hours).

9 106. At all times relevant herein, Defendants failed to maintain records of hours worked
10 by Aggrieved Employees as required under Labor Code § 1174(d).

11 107. Consequently, Plaintiff, as a representative of the State of California for Aggrieved
12 Employees, seeks to recover civil penalties pursuant to the PAGA for the alleged violations in an
13 amount according to proof and subject to Court approval.

14 108. Plaintiff will also seek recovery of attorneys’ fees and litigation expenses pursuant
15 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
16 enforcement of California labor laws and applicable regulations is determined to be in the public
17 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
18 according to proof and subject to Court approval.

19
20 **FIFTH CAUSE OF ACTION**

21 **(PAGA Civil Penalties for Failure to Timely Pay All Wages Due Upon Separation)**

22 **(Labor Code §§ 201, 202, and 203)**

23 **(Brought by Plaintiff on Behalf of the State of California for Aggrieved Employees**
24 **Against All Defendants)**

25 109. Plaintiff realleges and incorporates by this reference each of the foregoing
26 paragraphs as if fully set forth herein.

27 110. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
28 due within the time specified by law. California Labor Code § 203 provides that if an employer

1 willfully fails to timely pay such wages, the employer must continue to pay the subject employees'
2 wages until the back wages are paid in full or an action is commenced, up to a maximum of 30 days
3 of wages.

4 111. All Aggrieved Employees who ceased employment with Defendants are entitled to
5 unpaid compensation (including meal period and rest break premiums), but to date have not received
6 such compensation.

7 112. More than 30 days have passed since certain Aggrieved Employees left Defendants'
8 employ.

9 113. As a consequence of Defendants' willful conduct in not paying compensation for all
10 hours worked, Aggrieved Employees whose employment ended during the PAGA Period are
11 entitled to 30 days' wages under Labor Code § 203, together with interest thereon and attorneys'
12 fees and costs.

13 114. Consequently, Plaintiff, as a representative of the State of California for Aggrieved
14 Employees, seeks to recover civil penalties pursuant to the PAGA for the alleged violations in an
15 amount according to proof and subject to Court approval.

16 115. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant
17 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
18 enforcement of California labor laws and applicable regulations is determined to be in the public
19 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
20 according to proof and subject to Court approval.

21 **V. PRAYER FOR RELIEF**

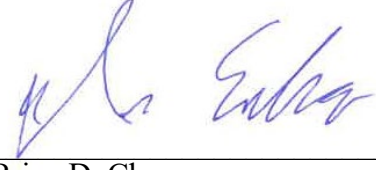
22 WHEREFORE, Plaintiff, as a representative of the State of California for Aggrieved
23 Employees, prays for relief as follows:
24

- 25 1. Designation of Plaintiff as the PAGA Representative for the Aggrieved Employees
26 and Plaintiff's attorneys as PAGA Counsel for the Aggrieved Employees;
- 27 2. Civil penalties, under PAGA;
- 28 3. Pre-judgment and post-judgment interest, as provided by law;

- 1 4. Such other equitable relief as the Court may deem just and proper; and
2 5. Attorneys' fees and costs of suit, including expert fees and fees pursuant to, among
3 others, California Labor Code §§ 218.5, 226, 1194, PAGA, Code of Civil Procedure
4 § 1021.5, and other applicable California laws.

7 Dated: November 5, 2024

BISNAR | CHASE LLP/ALPERS LAW GROUP

8
9
10 By: 

Brian D. Chase

Ian M. Silvers

Attorneys for Plaintiff, as a representative of
the State of California and Aggrieved
Employees.