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Superior Court of California,
County of San Benito
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Attorneys for Plaintiff
REYNA ESTHER MAYA DAMIAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BENITO

REYNA ESTHER MAYA DAMIAN, on
behalf of herself and all others similarly
situated,

Plaintiff,

vs.

CUSTOM AG-PAK, LLC; and DOES 1-10,
inclusive,

Defendants.

Case No. CU-24-00259

FIRST AMENDED COMPLAINT

1. Failure to Provide Duty Free Meal Periods
2. Failure to Provide Second Meal Periods
3. Failure to Provide Third Rest Periods
4. Failure to Pay Minimum Wages
5. Failure to Pay Overtime Wages
6. Unfair Competition
7. Failure to Provide Accurate Wage Statements
8. Failure to Pay All Wages Owed Upon Termination
9. Civil Penalties Under PAGA

DEMAND FOR JURY TRIAL

Plaintiff Reyna Esther Maya Damian ("Plaintiff"), on behalf of herself and, with respect to her claims for civil penalties under the Private Attorneys General Act ("PAGA"), on behalf of herself and other allegedly aggrieved employees, complains and alleges as follows:

INTRODUCTION

1. This lawsuit arises out of the failure of defendant Custom Ag-Pak, LLC ("Defendant") to comply with various labor laws with respect to non-exempt employees who engage in the packing of

1 agricultural products (“Packing Employees”). Defendant fails to provide Packing Employees with
2 meal periods that are duty free for 30 minutes; Defendant fails to provide Packing Employees who
3 work more than 10 hours in a workday with second meal periods or third rest periods; and Defendant
4 fails to pay Packing Employees all the minimum wages and/or overtime wages owed to them. The
5 meal periods provided to Packing Employees are not duty free for 30 minutes because Packing
6 Employees must doff and don their protective clothing and equipment during their 30 minute meal
7 periods. As a result of not providing Packing Employees with duty free meal periods, Defendant fails
8 to pay Packing Employees minimum wages and/or overtime wages for their meal period time, the
9 entirety of which constitutes compensable hours worked. Defendant also fails to pay Packing
10 Employees minimum wages and/or overtime wages for the time spent undergoing security checks
11 before entering the packing facility, and time spent donning protective clothing and equipment at the
12 packing facility before clocking in for work. As a result of the foregoing labor law violations,
13 Defendant fails to provide Packing Employees with accurate itemized wage statements and Defendant
14 fails to pay Packing Employees whose employment ends all the wages owed to them upon termination.
15 Plaintiff seeks all damages, restitution, and penalties to which she is entitled to for Defendant’s
16 violations of the law, which also constitute unfair business practices in violation of Business and
17 Professions Code Section 17200. On behalf of herself and Packing Employees who are “Aggrieved
18 Employees” as defined in paragraph 58 below, Plaintiff also seeks civil penalties under PAGA.

19 **JURISDICTION AND VENUE**

20 2. Venue is proper in the County of San Benito because Plaintiff and other Aggrieved
21 Employees worked for Defendant in the County of San Benito and the obligations of Defendant to
22 Plaintiff and other Aggrieved Employees under the California Labor Code were breached in the
23 County of San Benito.

24 3. The California Superior Court has jurisdiction in this matter because Plaintiff is a
25 resident of California, Defendant is qualified to do business in California, and Defendant regularly
26 conducts business in California. Further, there is no federal question at issue as the claims herein are
27 based solely on California law.
28

1 **THE PARTIES**

2 **A. Plaintiff**

3 4. Plaintiff worked as a Packing Employee for Defendants in Hollister, California from
4 approximately April 1, 2024 through September 12, 2024 when she resigned. During her employment
5 with Defendant, Plaintiff was provided a 30-minute meal period but the meal period was not duty free
6 for the entire 30 minutes because Plaintiff had to doff her protective clothing and equipment at the start
7 of the meal period and don her protective clothing and equipment at the end of the meal period.
8 Because Plaintiff was not provided a meal period that was duty free for 30 minutes, the entirety of her
9 meal period time constituted compensable hours worked for which Plaintiff was owed but was not paid
10 wages. During her employment with Defendant, Plaintiff was required to go through a security
11 screening before being allowed to enter the packing facility where she performed her work but Plaintiff
12 was not paid wages for any of the time she had to spend going through the security screening before
13 entering the packing facility. During her employment with Defendant Plaintiff was required, after
14 entering the packing facility, to retrieve and don her protective clothing before clocking in for work but
15 Plaintiff was not paid wages for any of the time she had to spend retrieving and donning her protective
16 clothing before clocking in for work. During her employment Plaintiff regularly worked overtime
17 hours and occasionally worked more than 10 hours in a workday. When Plaintiff worked more than 10
18 hours in a workday, Defendant did not provide her with a second meal period or a third rest period, and
19 Defendant did not pay Plaintiff the premium wages owed to her for any meal period violations or rest
20 period violations.

21 **B. Defendants**

22 5. At all relevant times, Defendant has been a limited liability company organized under
23 the law of the State of California with a principal place of business in Hollister, California. Defendant
24 is engaged in the business of packing and shipping agricultural products. Defendant was an employer
25 of Plaintiff and other Aggrieved Employees at the time Defendant breached its legal obligations to
26 them as described herein, and Defendant continues to breach legal obligations owed to similarly
27 situated Aggrieved Employees currently employed by Defendant.

28 6. Plaintiff is ignorant of the true name, capacity, relationship and extent of participation in

1 the conduct herein alleged, of the Defendants sued herein as DOES 1 through 10, but is informed and
2 believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct
3 alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend this
4 complaint to allege the true names and capacities of the DOE Defendants when ascertained.

5 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all
6 respects pertinent to this action as the agent of the other Defendant; each Defendant carried out a joint
7 scheme, business plan or policy in all respects pertinent hereto; and the acts of each Defendant are
8 legally attributable to the other Defendants.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PROVIDE DUTY FREE MEAL PERIODS**

11 **(By Plaintiff against Defendants)**

12 8. Plaintiff incorporates paragraphs 1 through 7 of this complaint as if fully alleged herein.

13 9. At all relevant times, Plaintiff was an employee covered by Labor Code Section 226.7,
14 Labor Code Section 512, and Wage Order 8.

15 10. Pursuant to Labor Code Section 512 and Wage Order 8, Plaintiff was entitled to a duty-
16 free meal period of at least 30 minutes before the start of her sixth hour of work on a workday.
17 Pursuant to Labor Code Section 226.7, Plaintiff was entitled to premium wages equal to one hour of
18 pay at her regular rate of pay for every day that a meal period was not provided in accordance with
19 Wage Order 8.

20 11. Defendant failed to provide Plaintiff with legally compliant meal periods in accordance
21 with Labor Code Section 512 and Wage Order 8, and Defendant failed to pay Plaintiff premium wages
22 in accordance with Labor Code Section 226.7 for meal period violations.

23 12. As a result of the unlawful conduct of Defendant, Plaintiff has suffered damages in an
24 amount, subject to proof, to the extent she was not paid all the premium wages owed to her for meal
25 period violations.

26 **SECOND CAUSE OF ACTION**

27 **FAILURE TO PROVIDE SECOND MEAL PERIODS**

28 **(By Plaintiff against Defendants)**

13. Plaintiff incorporates paragraphs 1 through 7 of this complaint as if fully alleged herein.

14. At all relevant times, Plaintiff was an employee covered by Labor Code Section 226.7, Labor Code Section 512, and Wage Order 8.

15. Pursuant to Labor Code Section 512 and Wage Order 8, Plaintiff was entitled to a second meal period of at least 30 minutes when she worked more than 10 hours in a workday. Pursuant to Labor Code Section 226.7, Plaintiff was entitled to premium wages equal to one hour of pay at her regular rate of pay for every day that a second meal period was not provided in accordance with Wage Order 8.

16. Defendant failed to provide Plaintiff with second meal periods in accordance with Labor Code Section 512 and Wage Order 8, and Defendant failed to pay Plaintiff \premium wages in accordance with Labor Code Section 226.7 for meal period violations.

17. As a result of the unlawful conduct of Defendant, Plaintiff has suffered damages in an amount, subject to proof, to the extent she was not paid all the premium wages owed to her for meal period violations.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE THIRD REST PERIODS

(By Plaintiff against Defendants)

18. Plaintiff incorporates paragraphs 1 through 7 of this complaint as if fully alleged herein.

19. At all relevant times, Plaintiff was an employee covered by Labor Code Section 226.7 and Wage Order 8.

20. Pursuant to Wage Order 8, Plaintiff was entitled to a rest period of at least 10 minutes for every four hours of work or major fraction thereof. Pursuant to Labor Code Section 226.7, Plaintiff was entitled to premium wages equal to one hour of pay at her regular rate of pay for every day that a rest period was not provided in accordance with Wage Order 8.

21. Defendant failed to provide Plaintiff with third rest periods in accordance with Wage Order 8, and Defendant failed to pay Plaintiff premium wages in accordance with Labor Code Section 226.7 for rest period violations.

22. As a result of the unlawful conduct of Defendant, has suffered damages in an amount,

subject to proof, to the extent she was not paid all the premium wages owed to her for rest period violations.

FOURTH CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(By Plaintiff against Defendants)

23. Plaintiff incorporates paragraphs 1 through 12 of this complaint as if fully alleged herein.

24. At all relevant times, Plaintiff was an employee covered by Labor Code Section 1197.

25. Pursuant to Labor Code Section 1197, Plaintiff was entitled to minimum wages for every hour she worked and/or every hour deemed compensable hours worked by virtue of being subject to the direction and/or control of her employer.

26. Defendant failed to pay Plaintiff all the minimum wages owed to her for every hour worked or deemed compensable hours worked in accordance with Labor Code Section 1197.

27. As a result of the unlawful conduct of Defendant, Plaintiff has suffered damages in an amount, subject to proof, to the extent she was not paid all the minimum wages owed to her.

28. Pursuant to Labor Code Section 1194, Plaintiff is entitled to recover the full amount of her unpaid minimum wages, interest thereon, reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 1194.2, Plaintiff is also entitled to recover liquidated damages in an amount equal to the amount of unpaid minimum wages and interest thereon.

FIFTH CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(By Plaintiff against Defendants)

29. Plaintiff incorporates paragraphs 1 through 12 and 23 through 28 of this complaint as if fully alleged herein.

30. At all relevant times, Plaintiff was an employee covered by Labor Code Sections 860-862 and/or Wage Order 8.

31. Pursuant to Labor Code Sections 860-862 and/or Wage Order 8, Plaintiff was entitled to overtime wages at the rate of 1 and ½ times her regular rate of pay for every hour of overtime worked or

1 deemed compensable hours worked, including overtime hours excess of daily limits, overtime hours in
2 excess of weekly limits, and overtime hours on a seventh consecutive day of a workweek.

3 32. Defendant failed to pay Plaintiff all the overtime wages owed to her for every hour of
4 overtime worked or deemed compensable hours worked in accordance with Labor Code Sections 860-
5 862 and/or Wage Order 8.

6 33. As a result of the unlawful conduct of Defendant, Plaintiff has suffered damages in an
7 amount, subject to proof, to the extent she was not paid all the overtime wages owed to her.

8 33. Pursuant to Labor Code Section 1194, Plaintiff is entitled to recover the full amount of
9 her unpaid overtime wages, interest thereon, reasonable attorney's fees and costs of suit.

10 **SIXTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **(By Plaintiff against Defendants)**

13 34. Plaintiff incorporates paragraphs 1 through 34 of this complaint as if fully alleged
14 herein.

15 35. The unlawful conduct of Defendant alleged herein constitutes unfair competition within
16 the meaning of Business and Professions Code Section 17200.

17 36. As a result of the unfair competition of Defendant alleged herein, Plaintiff has suffered
18 injury in fact and lost money or property. Plaintiff has been deprived of her rights to be provided duty
19 free meal periods, has been deprived of her rights to be provided second meal periods and third rest
20 periods when she worked more than 10 hours in a workday, has been deprived of her rights to be paid
21 premium wages for meal period violations and rest period violations, has been deprived of her rights to
22 be paid all the minimum wages owed to her, has been deprived of her rights to be paid all the overtime
23 wages owed to her when she worked overtime hours; and Plaintiff has not been paid all the minimum
24 wages, overtime wages, and/or premium wages for meal period violations or rest period violations
25 owed to her under California law.

26 37. Pursuant to Business and Professions Code Section 17203, Plaintiff is entitled to
27 restitution of all wages or other monies owed to her under California law (including interest thereon) in
28 which she had a property interest. Restitution of the money owed to Plaintiff that Defendant

wrongfully withheld and retained by means of engaging in unlawful business practices in violation of California law is necessary to prevent Defendant from becoming unjustly enriched by their failure to comply with California law.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(By Plaintiff against Defendants)

38. Plaintiff incorporates paragraphs 1 through 33 of this complaint as if fully alleged herein.

39. At all relevant times, Plaintiff was an employee covered by Labor Code Section 226.

40. Pursuant to Labor Code Section 226(a), Plaintiff was entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized wage statement showing, *inter alia*, the total amount of gross wages earned during the pay period, the total amount of net wages earned during the pay period, the total number of hours worked during the pay period, and the number of hours worked at each hourly rate.

41. Defendant failed to provide Plaintiff itemized statements in accordance with Labor Code Sections 226(a). The wage statements provided to Plaintiff failed to state the correct amounts of the total amount of gross wages earned during the pay period, the total amount of net wages earned during the pay period, the total number of hours worked during the pay period, and/or the number of hours worked at each hourly rate.

42. The failure of Defendant to provide Plaintiff with accurate wage statements was knowing and intentional. Defendant had the ability to provide Plaintiff with accurate wage statements but knew and intended that wage statements provided to Plaintiff did not comply with all the requirements of Labor Code Section 226(a). Defendant knew and intended that the wage statements provided to Plaintiff failed to state the correct amounts of the total amount of gross wages earned during the pay period, the total amount of net wages earned during the pay period, the total number of hours worked during the pay period, and/or the number of hours worked at each hourly rate.

43. As a result of Defendant's conduct, Plaintiff has suffered injury. From the wage statements provided to her alone, Plaintiff could not promptly and easily determine the total amount of gross wages actually earned, the total amount of net wages actually earned, the total number of hours worked during the pay period, and/or the number of hours worked at each hourly rate.

44. Pursuant to Labor Code Sections 226(e), Plaintiff is entitled to recover fifty dollars for the initial pay period in which a violation of Labor Code Section 226(a) occurred and one hundred dollars for each violation of Labor Code Section 226(a) in every subsequent pay period, not to exceed an aggregate civil penalty of four thousand dollars.

45. Pursuant to Labor Code Sections 218, 226(e), and 226(g) Plaintiff is entitled to recover the full amount of civil penalties due under Labor Code Section 226(e), reasonable attorney's fees and costs of suit.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES UPON TERMINATION

(By Plaintiff against Defendants)

46. Plaintiff incorporates paragraphs 1 through 33 of this complaint as if fully alleged herein.

47. At all relevant times, Plaintiff was employees covered by Labor Code Sections 201 or 202.

48. Pursuant to Labor Code Sections 201 or 202 Plaintiff was entitled to payment of all wages earned and unpaid prior to discharge in a timely manner upon the termination of her employment.

49. Defendant failed to pay Plaintiff all wages earned and unpaid prior to termination in accordance with Labor Code Section 201 or 202.

50. The failure of Defendant to pay Plaintiff all wages earned prior to termination in accordance with Labor Code Sections 201 or 202 was willful. Defendant had the ability to pay all wages earned by Plaintiff prior to termination in accordance with Labor Code Sections 201 or 202 but knew and intended that it was not paying Plaintiff all the wages owed to her upon the termination of her employment.

1 2699.3. By letter dated November 5, 2024, Plaintiff gave written notice (by electronic submission) to
2 the Labor and Workforce Development Agency (“LWDA”) and to Defendant (by e-mail to Defendant’s
3 counsel who agreed to notice in that manner) of Plaintiff’s allegations against Defendant. A true and
4 correct copy of this notice letter is attached as Exhibit 1. As set forth therein, Plaintiff notified the
5 LWDA that Plaintiff alleges that:

6 (1) In violation of Labor Code Section 512, Defendant does not provide Packing
7 Employees with meal periods that are duty free for 30 minutes. The meal periods provided to Plaintiff
8 and other Packing Employees were not duty free for 30 minutes because Plaintiff and other Packing
9 Employees had to doff their protective clothing and equipment at the start of the meal period and don
10 their protective clothing and equipment at the end of the meal period.

11 (2) In violation of Labor Code Section 512, Defendant does not provide Packing
12 Employees with second meal periods when they work more than 10 hours in a workday. When
13 Plaintiff and other Packing Employees worked more than 10 hours in a workday they were not
14 provided a second meal period.

15 (3) In violation of Labor Code Section 1198, Defendant does not provide Packing
16 Employees with third rest periods in accordance with Wage Order 8 when they work more than 10
17 hours in a workday. When Plaintiff and other Packing Employees worked more than 10 hours in a
18 workday, they were not provided a third rest period.

19 (4) In violation of Labor Code Section 226.7, Defendant does not pay Packing Employees
20 premium wages owed to them for any of the meal period violations or rest period violations described
21 above. When Defendant failed to provide Plaintiff and other Packing Employees meal periods or rest
22 periods in compliance with the law as described above, it did not pay them the premium wages owed
23 to them under Labor Code Section 226.7 for meal period violations and rest period violations.

24 (5) In violation of Labor Code Section 1197, Defendant does not pay Packing Employees
25 all the minimum wages owed to them for the following reasons:

26 a. Defendant does not pay Packing Employees wages for meal period time that, because
27 meal periods are not duty free for 30 minutes, constitutes compensable hours worked. When Plaintiff
28 and other Packing Employees were not provided with meal periods that were duty free for 30 minutes,

1 they were not paid minimum wages for any of their meal period time.

2 b. Defendant does not pay Packing Employees wages for the time they are required to
3 spend undergoing security screenings prior to entering the packing facility. When Plaintiff and other
4 Packing Employees spent time undergoing security screenings prior to entering the packing facility,
5 they were not paid minimum wages for any of that time.

6 c. Defendant does not pay Packing Employees wages for the time they are required to
7 spend retrieving and donning their protective clothing and equipment prior to clocking in for work.
8 When Plaintiff and other Packing Employees spent time retrieving and donning their protective
9 clothing and equipment prior to clocking in for work, they were not paid minimum wages for any of
10 that time.

11 (6) In violation of Labor Code Sections 860-862 and/or 1198 (based on violation of Wage
12 Order 8), Defendant does not pay Packing Employees who work overtime hours all the overtime wages
13 owed to them for the following reasons:

14 a. Defendant does not pay Packing Employees wages for meal period time that, because
15 meal periods are not duty free for 30 minutes, constitutes compensable hours worked. When Plaintiff
16 and other Packing Employees were not provided with meal periods that were duty free for 30 minutes
17 and worked overtime hours, they were not paid overtime wages for any of their meal period time.

18 b. Defendant does not pay Packing Employees wages for the time they are required to
19 spend undergoing security screenings prior to entering the packing facility. When Plaintiff and other
20 Packing Employees spent time undergoing security screenings prior to entering the packing facility and
21 worked overtime hours, they were not paid overtime wages for any of that time.

22 c. Defendant does not pay Packing Employees wages for the time they are required to
23 spend retrieving and donning their protective clothing and equipment prior to clocking in for work.
24 When Plaintiff and other Packing Employees spent time retrieving and donning their protective
25 clothing and equipment prior to clocking in for work and worked overtime hours, they were not paid
26 overtime wages for any of that time.

27 (7) In violation of Labor Code Section 226, Defendant does not provide Packing
28 Employees with accurate wage statements. The wage statements provided to Packing Employees do

1 not state the total amount of gross wages earned during the pay period, the total amount of net wages
2 earned during the pay period, the total number of hours worked during the pay period, and/or the
3 number of hours worked at each hourly rate during the pay period because, for the reasons explained
4 above, Defendant does not pay Packing Employees all the premium wages owed to them for meal
5 period violations and rest period violations, all the minimum wages owed to them, and/or all the
6 overtime wages owed to them. From the wage statements provided to them, Plaintiff and other
7 Packing Employees could not determine the correct amount of gross wages earned during the pay
8 period, the correct amount of net wages earned during the pay period, the correct number of hours
9 worked during the pay period, and/or the correct number of hours worked at each hourly rate during
10 the pay period.

11 (8) In violation of Labor Code Section 204, Defendant does not pay Packing Employees all
12 the wages owed to them every pay period because, for the reasons explained above, Defendant does
13 not pay Packing Employees all the premium wages owed to them for meal period violations and rest
14 period violations, all the minimum wages owed to them, and/or all the overtime wages owed to them.
15 When they received their paychecks on regular paydays, Defendant and other Packing Employees were
16 not paid all the premium wages, minimum wages and/or overtime wages owed to them.

17 (9) In violation of Labor Code Sections 201 and/or 202, Defendant does not pay Packing
18 Employees whose employment ends all the wages owed to them upon resignation or termination of
19 employment because, for the reasons explained above, Defendant does not pay Packing Employees all
20 the premium wages owed to them for meal period violations and rest period violations, all the
21 minimum wages owed to them, and/or all the overtime wages owed to them. When they received their
22 final paychecks after their employment ended, Plaintiff and other Packing Employees were not paid all
23 the premium wages, minimum wages and/or overtime wages owed to them.

24 (10) In violation of Labor Code Section 1198 (based on violation of Wage Order 8),
25 Defendant fails to keep accurate records of when the work periods of Packing Employees start and
26 end. Defendant did not record the correct starting time and/or ending time of the work periods of
27 Defendant or other Packing Employees because they had to doff their protective clothing and
28 equipment at the start of their meal periods, had to don their protective clothing and equipment at the

end of their meal periods, had to spend time undergoing security screenings prior to entering the packing facility, and/or had to spend time retrieving and donning their protective clothing and equipment prior to clocking in for work.

60. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendant's violations of the Labor Code in the following maximum amounts:

a. For violation of Labor Code Sections 201, 202, 204, 226, 226.7, 860-862, 1197 and 1198, one hundred dollars (\$100) for each employee per pay period [penalty amount per Labor Code Section 2699(f)(2)].

b. For violation of Labor Code Section 512, fifty dollars (\$50) for each employee for each pay period [penalty amount per Labor Code Section 558].

61. Pursuant to Labor Code Section 2699(m), 65% of the civil penalties recovered shall be distributed to the LWDA, and 35% shall be distributed to the Aggrieved Employees.

62. Pursuant to Labor Code Section 2699(k), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with her claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

A. Damages for unpaid premium wages for meal period violations under Labor Code Section 226.7.

B. Damages for unpaid premium wages for rest period violations under Labor Code Section 226.7.

C. Damages for unpaid minimum wages under Labor Code Section 1194.

D. Liquidated damages under Labor Code Section 1194.2.

E. Damages for unpaid overtime wages under Labor Code Section 1194.

F. Restitution for unpaid monies owed under Business and Professions Code Section 17203.

G. Civil penalties for inaccurate wage statements under Labor Code Section 226.

H. Damages for unpaid wages under Labor Code Section 201 or 202.

- 1 I. Damages for unpaid penalty wages under Labor Code Section 203.
2 J. Civil penalties under Labor Code Section 2699.
3 K. Pre-judgment interest.
4 L. Costs.
5 M. Reasonable attorney's fees.
6 N. Such other and further relief as the Court deems just and proper.
7

8 Dated: January 21, 2025

KARASIK LAW FIRM
LAW OFFICES OF SANTOS GOMEZ

9 By *s/ Gregory N. Karasik*
10 Gregory N. Karasik
Attorneys for Plaintiff

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff demands a trial by jury on all claims so triable.

13 Dated: January 21, 2025

KARASIK LAW FIRM
LAW OFFICES OF SANTOS GOMEZ

14 By *s/ Gregory N. Karasik*
15 Gregory N. Karasik
16 Attorneys for Plaintiff
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EXHIBIT A

KARASIK LAW FIRM

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November 5, 2024

Labor and Workforce Development Agency
Department of Industrial Relations
Online Filing

Re: California Labor Code §2699 Letter

Aggrieved Employee: Reyna Esther Maya Damian
Employer: Custom Ag-Pak, LLC

This letter shall serve as notice under Labor Code Section 2699.3 that Reyna Esther Maya Damian alleges that her former employer Custom Ag-Pak, LLC ("Custom Ag-Pak") has a practice of violating the Labor Code with respect to non-exempt employees who engage in the packing of agricultural products ("Packing Employees"). Ms. Damian worked as a Packing Employee for Custom Ag-Pak in Hollister, California from approximately April 1, 2024 through September 1, 2024. Ms. Damian alleges, on behalf of herself and other Packing Employees, that Custom Ag-Pak violates the Labor Code in the following ways:

1. In violation of Labor Code Section 512, Custom Ag-Pak does not provide Packing Employees with meal periods that are duty free for 30 minutes. The meal periods provided to Ms. Damian and other Packing Employees were not duty free for 30 minutes because Ms. Damian and other Packing Employees had to doff their protective clothing and equipment at the start of the meal period and don their protective clothing and equipment at the end of the meal period.
2. In violation of Labor Code Section 512, Custom Ag-Pak does not provide Packing Employees with second meal periods when they work more than 10 hours in a workday. When Ms. Damian and other Packing Employees worked more than 10 hours in a workday they were not provided a second meal period.
3. In violation of Labor Code Section 1198, Custom Ag-Pak does not provide Packing Employees with third rest periods in accordance with Wage Order 8 when they work more than 10 hours in a workday. When Ms. Damian and other Packing Employees worked more than 10 hours in a workday, they were not provided a third rest period.
4. In violation of Labor Code Section 226.7, Custom Ag-Pak does not pay Packing Employees premium wages owed to them for any of the meal period violations or rest period

violations described above. When Custom Ag-Pak failed to provide Ms. Damian and other Packing Employees meal periods or rest periods in compliance with the law as described above, it did not pay them the premium wages owed to them under Labor Code Section 226.7 for meal period violations and rest period violations.

5. In violation of Labor Code Section 1197, Custom Ag-Pak does not pay Packing Employees all the minimum wages owed to them for the following reasons:

a. Custom Ag-Pak does not pay Packing Employees wages for meal period time that, because meal periods are not duty free for 30 minutes, constitutes compensable hours worked. When Ms. Damian and other Packing Employees were not provided with meal periods that were duty free for 30 minutes, they were not paid minimum wages for any of their meal period time.

b. Custom Ag-Pak does not pay Packing Employees wages for the time they are required to spend undergoing security screenings prior to entering the packing facility. When Ms. Damian and other Packing Employees spent time undergoing security screenings prior to entering the packing facility, they were not paid minimum wages for any of that time.

c. Custom Ag-Pak does not pay Packing Employees wages for the time they are required to spend retrieving and donning their protective clothing and equipment prior to clocking in for work. When Ms. Damian and other Packing Employees spent time retrieving and donning their protective clothing and equipment prior to clocking in for work, they were not paid minimum wages for any of that time.

6. In violation of Labor Code Sections 860-862 and/or 1198 (based on violation of Wage Order 8), Custom Ag-Pak does not pay Packing Employees who work overtime hours all the overtime wages owed to them for the following reasons:

a. Custom Ag-Pak does not pay Packing Employees wages for meal period time that, because meal periods are not duty free for 30 minutes, constitutes compensable hours worked. When Ms. Damian and other Packing Employees were not provided with meal periods that were duty free for 30 minutes and worked overtime hours, they were not paid overtime wages for any of their meal period time.

b. Custom Ag-Pak does not pay Packing Employees wages for the time they are required to spend undergoing security screenings prior to entering the packing facility. When Ms. Damian and other Packing Employees spent time undergoing security screenings prior to entering the packing facility and worked overtime hours, they were not paid overtime wages for any of that time.

c. Custom Ag-Pak does not pay Packing Employees wages for the time they are required to spend retrieving and donning their protective clothing and equipment prior to clocking in for work. When Ms. Damian and other Packing Employees spent time retrieving and donning their protective clothing and equipment prior to clocking in for work and worked overtime hours, they were not paid overtime wages for any of that time.

7. In violation of Labor Code Section 226, Custom Ag-Pak does not provide Packing Employees with accurate wage statements. The wage statements provided to Packing Employees do not state the total amount of gross wages earned during the pay period, the total amount of net wages earned during the pay period, the total number of hours worked during the pay period, and/or the number of hours worked at each hourly rate during the pay period because, for the reasons explained above, Custom Ag-Pak does not pay Packing Employees all the premium wages owed to them for meal period violations and rest period violations, all the minimum wages owed to them, and/or all the overtime wages owed to them. From the wage statements provided to them, Ms. Damian and other Packing Employees could not determine the correct amount of gross wages earned during the pay period, the correct amount of net wages earned during the pay period, the correct number of hours worked during the pay period, and/or the correct number of hours worked at each hourly rate during the pay period.

8. In violation of Labor Code Section 204, Custom Ag-Pak does not pay Packing Employees all the wages owed to them every pay period because, for the reasons explained above, Custom Ag-Pak does not pay Packing Employees all the premium wages owed to them for meal period violations and rest period violations, all the minimum wages owed to them, and/or all the overtime wages owed to them. When they received their paychecks on regular paydays, Ms. Damian and other Packing Employees were not paid all the premium wages, minimum wages and/or overtime wages owed to them.

9. In violation of Labor Code Sections 201 and/or 202, Custom Ag-Pak does not pay Packing Employees whose employment ends all the wages owed to them upon termination of employment because, for the reasons explained above, Custom Ag-Pak does not pay Packing Employees all the premium wages owed to them for meal period violations and rest period violations, all the minimum wages owed to them, and/or all the overtime wages owed to them. When they received their final paychecks after their employment ended, Ms. Damian and other Packing Employees were not paid all the premium wages, minimum wages and/or overtime wages owed to them.

10. In violation of Labor Code Section 1198 (based on violation of Wage Order 8), Custom Ag-Pak fails to keep accurate records of when the work periods of Packing Employees start and end. Custom Ag-Pak did not record the correct starting time and/or ending time of the work periods of Ms. Damian or other Packing Employees because they had to doff their protective clothing and equipment at the start of their meal periods, had to don their protective clothing and equipment at the end of their meal periods, had to spend time undergoing security screenings prior to entering the packing facility, and/or had to spend time retrieving and donning their protective clothing and equipment prior to clocking in for work.

Please advise whether the LWDA intends to investigate these allegations. If we do not receive a timely notice that the LWDA intends to do so, Mr. Damian will proceed to seek civil penalties against Custom Ag-Pak under Labor Code Section 2699 in a civil lawsuit.

Very truly yours,

KARASIK LAW FIRM

s/ Gregory N. Karasik
Gregory N. Karasik

cc: Ana Toledo
NOLAND, HAMERLY, ETIENNE & HOSS
atoledo@nheh.com

Attorneys for Custom Ag-Pak
Via E-Mail
(Pursuant to agreement of counsel for Custom Ag-Pak)

1 **PROOF OF SERVICE**

2 Damian v. Custom Ag-Pak, LLC
3 San Benito Superior Court, Case No. CU-24-00259

4 I am employed in the State of California, County of Los Angeles. I am over the age of
5 18 and not a party to the within action. My business address is 13900 Marquesas Way #5416,
6 Marina Del Rey, California 90292.

7 I served the document described as **FIRST AMENDED COMPLAINT** on the
8 interested parties in this action listed below:

9

10 [x]	11 BY E-MAIL: Based on court order or the agreement of the parties to accept service 12 by electronic transmission, I caused the documents to be sent to the person at the 13 email address listed below.
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14 **SERVICE LIST**

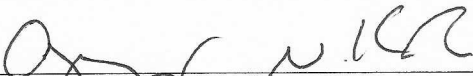
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22 Attorneys for Defendant

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Attorneys for Plaintiff

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct. Executed on January 21, 2025 at Marina Del Rey, California.

25 
26 Gregory N. Karasik