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Attorneys for Plaintiff and aggrieved employees,
MONTE GOMEZ

IN THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN, STOCKTON COURTHOUSE

MONTE GOMEZ, an individual, on behalf of
himself and all aggrieved employees,

Plaintiff,

vs.

BERRY GLOBAL, INC., a Delaware
Corporation; THOMAS SALMON, an
individual; and DOES 1 through 20 inclusive,

Defendants.

STK-CV-

-2024-

5154

COMPLAINT FOR:

1. Failure to Indemnify for Necessary Expenditures in Violation of Labor Code § 2802;
2. Civil Penalties in Violation of Labor Code §§ 2698, et seq.;
3. Unfair Competition in Violation of Business & Professions Code §§17200, et seq.

DEMAND OVER \$35,000

1. Plaintiff MONTE GOMEZ is informed and believes and thereon alleges as follows:

1 **PARTIES, VENUE AND JURISDICTION**

2 2. Plaintiff MONTE GOMEZ was at all times relevant hereto a resident of Stockton,
3 California.

4 3. At all relevant times herein, Defendant BERRY GLOBAL, INC. was a citizen and
5 resident of Delaware, and a Corporation that conducted business in Lathrop, California.

6 4. Defendant THOMAS SALMON was at all times relevant herein the principal of
7 BERRY GLOBAL, INC. and was a citizen and resident of Indiana.

8 5. The true names and capacities, whether individual, corporate, associate, or otherwise,
9 of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and
10 therefore these Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
11 Complaint to insert the true names and capacities of these Defendants when they become known to
12 Plaintiff. Plaintiff is informed and believes and based thereupon alleges, that each of the fictitiously
13 named Defendants is responsible for the wrongful acts alleged herein and are therefore liable to
14 Plaintiff as alleged hereinafter.

15 6. Plaintiff is informed and believes and based thereupon alleges, that at all times relevant
16 hereto, Defendants were the agents, employees, managing agents, supervisors, coconspirators, parent
17 corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendants, and
18 each of them, and in doing the things alleged herein, were acting at least in part within the course and
19 scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or
20 joint venture and with the permission and consent of each of the other Defendants.

21 7. Plaintiff is informed and believes and based thereupon alleges, that Defendants,
22 including those defendants named as DOES 1-20, acted in concert with one another to commit the
23 wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
24 wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and
25 based thereupon alleges, that Defendants, including those defendants named as DOES 1-20, formed
26 and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts
27 alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy,
28 intended to cause and actually causing Plaintiff's harm.

8. Whenever and wherever reference is made in this Complaint to any act or failure to act by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts and/or failures to act by each Defendant acting individually, jointly and severally.

FACTUAL ALLEGATIONS

9. Plaintiff MONTE GOMEZ began working for Defendant BERRY GLOBAL, INC. (“Berry”) located at 601 Tesla Dr., Suite A, Lathrop, California 95330, in or around the beginning of 2017 through April 17, 2023, when the company shut down its Lathrop location.

10. Plaintiff is informed and believes that Berry has locations across the country.

11. At the start of 2017, Mr. Gomez's job title was Warehouse Material Handler, and his job duties were mixing materials and operating forklifts to transport production materials. His shifts were 10:30 PM to 7:00 AM, Monday through Friday. Mr. Gomez made \$15 per hour as a Warehouse Material Handler.

12. Later in 2017, Mr. Gomez switched jobs and began working as a Production Material Handler, in which his job duties consisted of mixing colors and resin by hand to produce specialized bottles for bike manufacturing and glass bottles for syrup. Sometime during 2019, Mr. Gomez's wages were increased to \$18 per hour. As a Production Material Handler, his shifts were 10:30 PM to 7:00 AM, Sunday through Thursday.

13. In early 2022, Mr. Gomez began working as an Extrusion Blow Molding Technician (“EBM Tech”), and his job duties consisted of removing molds from machines, repairing those machines and tray packers, and fixing sensors and conveyors. In order to complete his job duties as an EBM Tech, Mr. Gomez required various hand tools such as wrenches, sockets, ratchets, screwdrivers, and plied wrenches. As an EBM Technician, Mr. Gomez was paid just \$25 per hour, despite being required to supply his own tools to complete his job duties, which is in violation of IWC Wage Order 4-2001. As an EBM Tech, Mr. Gomez’s shifts were 11:00 PM to 7:30 AM, Friday through Tuesday.

14. During the hiring process, Mr. Gomez was verbally told that he would start as a Warehouse Material Handler, which did not require him to provide his own hand tools, but once he became a technician, he would be required to supply his own tools. Berry did provide certain large tools, such as table grinders and bandsaws, however, Mr. Gomez and the other employees rarely

1 needed such tools. Instead, Mr. Gomez and the other technicians purchased their own tool kits in order
2 to do their jobs. As a result, Mr. Gomez spent nearly \$7,000 on tools that he required to complete his
3 job duties.

4 15. In or around January 2023, Mr. Gomez received a letter from Berry stating that he
5 would be terminated upon the closing of Berry's Lathrop location.

6 16. Thereafter, on April 17, 2023, Berry's Lathrop location closed.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO INDEMNIFY FOR NECESSARY EXPENDITURES**

9 **IN VIOLATION OF LABOR CODE § 2802**

10 **(AGAINST ALL DEFENDANTS)**

11 17. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
12 though fully set forth herein.

13 18. An employer shall indemnify its employee for all necessary expenditures or losses
14 incurred by the employee in direct consequence of the discharge of their duties, or of their obedience
15 to the directions of the employer.

16 19. From March 1, 2017, to April 17, 2023, Plaintiff was required by Defendants to
17 purchase tools, and in fact did purchase tools in order to perform his duties.

18 20. From March 1, 2017, to the present date, Defendants failed to pay Plaintiff less than
19 twice the minimum wage in contravention of IWC Wage Order 4-2001, § 9(B), 8 CAL. CODE REGS. §
20 11040, § 9(B), and California Labor Code §§ 1182, 1194, 1194.2, and 1197.

21 21. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
22 Defendants have maintained a policy, practice, or a lack of policy, which resulted in their failure to
23 indemnify employees for the reasonable expenses they incurred in the course of performing their
24 duties.

25 22. As a result of the foregoing, Plaintiff is entitled to recover all sums incurred by his
26 purchases of the tools that were necessary for the performance of his job and which he was required
27 to purchase in an amount according to proof at trial.

28 23. As a result of the foregoing, Plaintiff is further entitled to an award of interest at the

1 same rate as judgments in civil actions, accruing from the date on which Plaintiff incurred the
2 necessary expenditures or losses and all reasonable costs, including attorney's fees incurred by them
3 enforcing the rights granted by Labor Code § 2802.

4 **SECOND CAUSE OF ACTION**
5 **CIVIL PENALTIES IN VIOLATION OF**
6 **LABOR CODE § 2699, ET SEQ.**
7 **(AGAINST ALL DEFENDANTS)**

8 24. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
9 though fully set forth herein.

10 25. Under Labor Code § 2698, et seq., Plaintiff, as a aggrieved employee, may bring an
11 action against Defendants, on behalf of themselves and other current or former employees, seeking civil
12 penalties for defendants' violations of the California Labor Code.

13 26. Plaintiff was an aggrieved employee within the meaning of Labor Code § 2698, et seq.
14 by virtue of the numerous Labor Code violations he was subjected to as plead herein, including Labor
15 Code § 2802.

16 27. Defendants also subjected the aggrieved employees on whose behalf Plaintiff brings
17 this enforcement action to all of the Labor Code violations plead herein, including failing to reimburse
18 for necessary business expenditures in violation of Labor Code § 2802.

19 28. On February 14, 2024, Plaintiff provided written notice by online filing with the Labor
20 and Workforce Development Agency, and on February 22, 2024, Plaintiff thereafter provided written
21 notice by certified mail to Defendants of the specific provisions of the Labor Code alleged to have
22 been violated, including the facts and theories to support the alleged violation, as required by Labor
23 Code § 2699.3(a)(1)(A).

24 29. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and
25 Workforce Development Agency of its intent to pursue an action against Defendants.

26 30. As a direct and proximate result of Defendants' California Labor Code violations as set
27 forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period
28 for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent

1 violation, pursuant to Labor Code §2699 (f), for those Labor Code sections not expressly providing
2 for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
3 provide for a penalty.

4 31. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the
5 recovered civil penalties.

6 **THIRD CAUSE OF ACTION**
7 **UNFAIR COMPETITION IN VIOLATION OF**
8 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**
9 **(AGAINST ALL DEFENDANTS)**

10 32. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
11 though fully set forth herein.

12 33. Defendants are a "person" as defined by California Business & Professions Code §
13 17201.

14 34. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful,
15 and harmful to Plaintiff and to the general public. Plaintiff has suffered injury in fact and has lost
16 money as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce important
17 rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

18 35. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
19 predicated on the violation of any state or federal law.

20 36. Defendants' failure to obey the wage and hour laws plead herein, including violations
21 of the Labor Code, Code of Regulations and Wage Orders, constitute unfair business practices in
22 violation of Business & Professions Code §§ 17200, *et seq.*

23 37. As a result of Defendants' unfair business practices, Defendants have reaped unfair
24 benefits and illegal profits at the expense of Plaintiff and members of the public.

25 38. Pursuant to California Business & Professions Code §§ 17200 *et seq.* Plaintiff is
26 entitled to restitution of the wages withheld and retained by Defendants during a period that
27 commences four years prior to the filing of this complaint; a permanent injunction requiring
28 Defendants to pay all outstanding wages due to Plaintiff and aggrieved employees; and an award of

1 attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and
2 an award of costs.

3 **PRAYER FOR RELIEF**

4 Plaintiff prays for relief and judgment against Defendants as follows:

5 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess
6 of \$25,000, exclusive of interest and costs.

7 **As to the First Cause of Action**
8 **(Unreimbursed Business Expenses)**

9 2. That the Court adjudge, declare and decree that Defendants violated Labor Code § 2802
10 by willfully failing to reimburse business expenses incurred by Plaintiff;

11 3. For unreimbursed business expenses and for all actual, consequential, and incidental
12 losses and damages, according to proof;

13 4. For interest at the same rate as judgments in civil actions, accruing from the date on
14 which Plaintiff incurred the necessary expenditures or loses pursuant to Labor Code § 2802;

15 5. For all reasonable costs and attorney's fees incurred by Plaintiff's enforcement of the
16 rights granted by Labor Code § 2802 pursuant to Labor Code § 2802(c); and

17 6. For such other relief that the Court deems just and appropriate.

18 **As to the Second Cause of Action**
19 **(Civil Penalties under the PAGA)**

20 7. That the Court declare, adjudge, and decree that Defendants violated all California
21 Labor Code sections plead herein, including Labor Code § 2802;

22 8. For civil penalties pursuant to sections 210, 226.3, 256, 558, 1174.5, 1197.1, 2699(a)
23 and/or 2699(a), (f) and (g), for violations of all California Labor Code sections plead herein, including
24 Labor Code § 2802;

25 9. For attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1), and any
26 and all other relevant statutes, for Defendants' violations of all California Labor Code sections plead
27 herein, including Labor Code § 2802;

28 10. For pre-judgment and post-judgment interest as provided by law; and

11. For such other and further relief as the Court deems just and appropriate.

As to the Third Cause of Action

(Unfair Competition)

12. That the employment practices engaged in by Defendant as plead herein, including violations of the Labor Code sections, Code of Regulations and Wage Orders, constitute unfair business practices in violation of Business & Professions Code §§17200, et seq.;

13. For restitution of unpaid wages to Plaintiff and prejudgment interest from the day such amounts were due and payable;

14. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, et seq.;

15. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5; and

16. For such other and further relief as the Court deems just and appropriate.

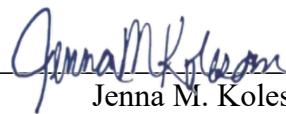
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues.

PIMENTEL LAW, P.C.

Dated: April 26, 2024

By: _____



Jenna M. Koleson, Esq.
Attorney for Plaintiff