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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 01 2022

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

MIKAYLA STEWART, on behalf of all
Aggrieved Employees and the State of
California;

Plaintiff,

vs.

ENVISION FOODS, LLC, a California
Limited Liability Company; JIB HOLDINGS
I, LLC, a California Limited Liability
Company; DESERT JACK, LLC, a California
Limited Liability Company; TNH
PARTNERS, LLC, a California Limited
Liability Company, ALLIED RESTAURANT
MANAGEMENT, LLC, a California Limited
Liability Company; ENV MANAGEMENT,
LLC, a California Limited Liability
Company; and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIV SB 2207266

REPRESENTATIVE ENFORCEMENT
ACTION COMPLAINT [Private
Attorneys General Act of 2004 ("PAGA"),
Lab. Code § 2698, et seq.]

- (1) Violation of Labor Code § 6400
- (2) Violation of Labor Code § 6401
- (3) Violation of Labor Code § 6402
- (4) Violation of Labor Code § 6403
- (5) Violation of Labor Code § 6404
- (6) Violation of Labor Code § 6401.7
- (7) Violation of Labor Code § 6407

#435 SC.2022.25998 MW

#1000 SC.2022.26001 MW

FILED BY FAX

Plaintiff Mikayla Stewart (“Plaintiff”), on behalf of herself and all other similarly Aggrieved Employees and the State of California. hereby brings this Private Attorneys General Act (“PAGA”) Representative Action Complaint (“Complaint”) against Defendants, as follows.¹

I. INTRODUCTION AND GENERAL ALLEGATIONS

1. Plaintiff brings this action against her former employer(s), Defendants Envision Foods, LLC, JIB Holdings I, LLC, Desert Jack, LLC, TNH Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC, and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all current and former employees employed by Defendants in California within the last one year and 33-days prior to the filing of this action (hereinafter, the “Aggrieved Employees”), for violations of State regulations regarding unsafe working conditions, as further detailed herein.

2. Specifically, Plaintiff alleges that Defendants have denied Plaintiff and the Aggrieved employees a safe and healthful place of employment as required under California law and the Safety and Health Standards set forth by Cal/OSHA.

3. As brief background, in early 2020, a novel coronavirus, SARS-CoV-2, swept across the globe due to its highly contagious nature. The resulting infections cause a disease known as “COVID-19” and soon resulted in a worldwide pandemic. As of March 28, 2022, COVID-19 has infected approximately 8,483,568 people in California and has killed over 87,950 people in this State.² And the numbers across the United States are staggering, with over 79 million cases and over 970,000 deaths nationwide.³

4. The World Health Organization, the Centers for Disease Control, and doctors, scientists, and experts worldwide have agreed – from the start – that COVID-19 infections can be minimized by slowing the spread of disease. And this can be accomplished through limiting contact, incorporating physical distancing protocols, and by implementing other preventative measures such as the use of sufficient personal protective equipment (“PPE”) paired with

¹ Because a PAGA action is aimed at deterring and punishing violations of the Labor Code, the State of California “is always the real party in interest in the suit.” *Iskanian v. CLS Transp. of Los Angeles, LLC* (2014) 59 Cal.4th 348, 360; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 185 (all PAGA claims “are brought on the state’s behalf”).

² *Tracking COVID-19 in California*, <https://covid19.ca.gov/state-dashboard/> (updated March 28, 2022).

³ *COVID Data Tracker*, <https://covid.cdc.gov/covid-data-tracker/> (updated March 28, 2022)

1 frequent handwashing and sanitization of surfaces.

2 5. Despite the serious health threat that COVID-19 posed and still poses, Defendants
3 failed to implement proper safety protocols, leading to unsafe working conditions for all
4 Aggrieved Employees.

5 6. For instance, at all relevant times, Defendants owned and operated Jack in the
6 Box franchise locations. And, during this pandemic, Plaintiff and the Aggrieved Employees had
7 daily exposure to the general public. However, Defendants did not impose or enforce sufficient
8 regulations regarding social distancing among employees and customers and also has not
9 imposed or enforced mask requirements for its customers. Furthermore, the lack of physical
10 barriers between employees and customers (*e.g.*, the lack of a plexiglass barrier at the registers)
11 allows customers to breath on Aggrieved Employees, raising health and safety issues since the
12 SARS-CoV-2 virus is passed through aerosolized droplets and/or airborne particulates.

13 7. Additionally, Defendants failed to provide the Aggrieved Employees with
14 adequate PPE, as it only provided one face mask of face shield per employee. Defendants also
15 made it clear that, if an Aggrieved Employee lost or misplaced the one face mask/shield
16 provided, that the employee was required to purchase their own. So, in addition to the failure to
17 provide adequate PPE, Defendants' policies also resulted in Aggrieved Employees reusing PPE
18 without proper sanitization and/or sharing PPE with coworkers without adequate sanitization.

19 8. Defendants also failed to disinfect and clean frequently touched surfaces and
20 spaces, such as those in the breakroom, in common areas, and in restrooms. And Defendants
21 also failed to routinely disinfect, clean, or have any protocol for the safety and sanitization of
22 shared equipment such as cash registers, telephones, and headsets.

23 9. Moreover, Plaintiff was not provided, nor has she seen, any written Illness
24 Prevention protocol to combat and minimize the risk of COVID-19 infection. Furthermore,
25 Plaintiff is unaware of any protocols that inform employee of potential contact and exposure to
26 COVID-19 positive individuals. As such, Plaintiff alleges that these policies/protocol do not
27 exist, in violation of California law.

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1 10. Plaintiff also alleges that Defendants failed to implement other, non-COVID-
2 related, safety protocols. For instance, Defendants required its employees to periodically
3 conduct inspections of the premises, including the roof of the building. However, the roof did
4 not have any railing and there were no fall protection measures enacted by Defendants, despite
5 the risk of serious injury. Also, the Aggrieved Employees were often exposed to risk of shock
6 and electrocution because the roof leaked water into and through the light fixtures.

7 11. As a result of Defendants' policies and practices, Plaintiff and the Aggrieved
8 Employees were and are constantly subjected to health and safety violations under the California
9 Labor Code and Cal/OSHA Safety and Health Standards. Therefore, Plaintiff brings this lawsuit
10 on behalf of all Aggrieved Employees and the State of California, as the real party in interest, to
11 recover all applicable and available PAGA penalties, as well as attorneys' fees, costs, and/or
12 other damages as permitted by PAGA to "remediate present violations and deter future ones."
13 See *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 86.

14 **II. JURISDICTION**

15 12. This Court has jurisdiction over the claims for relief of Plaintiff and the
16 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

17 **III. VENUE**

18 13. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
19 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
20 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
21 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented
22 Employees in San Bernardino County.

23 **IV. PARTIES**

24 **Plaintiff**

25 14. Plaintiff and PAGA Representative Mikayla Stewart was employed by
26 Defendants from approximately January through August 2021 and performed work for
27 Defendants in San Bernardino County.

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Defendants

15. Plaintiff is informed and believes and thereon alleges that Defendant Envision Foods, LLC is a California limited liability company authorized to and doing business in San Bernardino County, California. Plaintiff is also informed and believes that Defendant Envision Foods, LLC is and/or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable statutory periods.

16. Plaintiff is informed and believes and thereon alleges that Defendant JIB Holdings I, LLC is a California limited liability company authorized to and doing business in San Bernardino County, California. Plaintiff is also informed and believes that Defendant JIB Holdings I, LLC is and/or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable statutory periods.

17. Plaintiff is informed and believes and thereon alleges that Defendant Desert Jack, LLC is a California limited liability company authorized to and doing business in San Bernardino County, California. Plaintiff is also informed and believes that Defendant Desert Jack, LLC is and/or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable statutory periods.

18. Plaintiff is informed and believes and thereon alleges that TNH Partners, LLC is a California limited liability company authorized to and doing business in San Bernardino County, California. Plaintiff is also informed and believes that Defendant TNH Partners, LLC is and/or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable statutory periods.

19. Plaintiff is informed and believes and thereon alleges that Defendant Allied Restaurant, LLC is a California limited liability company authorized to and doing business in San Bernardino County, California. Plaintiff is also informed and believes that Defendant Allied Restaurant Management, LLC is and/or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable statutory periods.

20. Plaintiff is informed and believes and thereon alleges that Defendant ENV Management, LLC is a California limited liability company authorized to and doing business in

1 San Bernardino County, California. Plaintiff is also informed and believes that Defendant ENV
2 Management, LLC is and/or was the legal employer of Plaintiff and the Aggrieved Employees
3 during the applicable statutory periods.

4 21. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
5 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
6 inclusive, but on information and belief alleges that those Defendants are legally responsible for
7 the payment of penalties and damages to Plaintiff and all Aggrieved Employees by virtue of
8 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
9 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
10 Defendants when ascertained.

11 22. Plaintiff is informed and believes and thereon alleges that he and the Aggrieved
12 Employees worked under the joint direction and control of Defendants and that Defendants, and
13 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
14 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
15 each Defendant are legally attributable to the other Defendants. On information and belief, a
16 unity of interest and ownership between each Defendant exists such that all Defendants acted as
17 a single employer of Plaintiff and other Aggrieved Employees.

18 23. Furthermore, Plaintiff is informed and believes and thereon alleges that
19 Defendants, and each of them, are an integrated enterprise and should be treated as a single
20 employer because these entities share an interrelation of operations, with common human
21 resources and personnel policies and shared common offices and facilities. Additionally,
22 Defendants also have a shared website, common management, a centralized control of labor
23 operations, and common ownership or financial control.

24 24. Plaintiff is informed and believes and thereon alleges that, in conducting
25 themselves in the manner described herein, Defendants, and each of them, were acting in active
26 concert with one another such that the acts of each were and are fully attributable to the others in
27 all material respects. Plaintiff is further informed and believes that at all relevant times
28 Defendants and each of them are now, and at all material times herein mentioned were, the

agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of their remaining co-Defendants.

25. Plaintiff is further informed and believes that at all relevant times, Defendants have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Defendants should be imposed jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the separate existence of these corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

26. Pursuant to Labor Code § 2699.3(b)(1), Plaintiff gave notice by online filing to the Division of Occupational Safety and Health (“DOSH”), with copies via certified mail to Defendants and the California Labor and Workforce Development Agency (“LWDA”). This Notice included a description of the specific provisions alleged to have been violated including the facts and theories to support the alleged violation. A copy of the Notice is attached hereto as **Exhibit A**, as required by Labor Code § 2699.3(b)(2)(iii).

27. By February 25, 2022, DOSH did not inspect or investigate the alleged violations, nor did DOSH provide any response to Plaintiff’s Notice. Therefore, pursuant to Labor Code § 2699.3(b)(2)(B), Plaintiff provided notice to the LWDA of her intention to file a PAGA action for civil penalties, and this notice complied with the requirements of Labor Code § 2699.3(c)(1).

28. Defendants did not cure within the 33-day window under Labor Code § 2699.3(c)(2).

29. Based on the foregoing, Plaintiff has fully exhausted her administrative prerequisites to suit under the PAGA.

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1 **VI. PAGA CAUSES OF ACTION**

2 30. Plaintiff is an “aggrieved employee” under the PAGA as she was employed by
3 Defendants during the applicable statutory period and suffered one or more of the Labor Code
4 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
5 action filed on behalf of himself and all other similarly situated current and former aggrieved
6 employees against whom one or more of the alleged violations was committed.

7 31. Therefore, Plaintiff seeks to recover all applicable and available PAGA remedies,
8 as well as attorneys’ fees, costs, and/or other damages as permitted by PAGA through a
9 representative action pursuant to the PAGA and the California Supreme Court in *Arias v.*
10 *Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does she, seek
11 class certification of the PAGA claims under Code of Civil Procedure § 382.

12 **FIRST CAUSE OF ACTION**

13 **PAGA ASSESSMENT FOR VIOLATION OF LABOR CODE § 6400**

14 (Labor Code § 6400)

15 *As Against All Defendants*

16 32. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
17 alleged herein.

18 33. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
19 that did not receive the benefits and protections of the Labor Code and Cal/OSHA Safety and
20 Health Standards.

21 34. Labor Code § 6400(a) states: “Every employer shall furnish employment and a
22 place of employment that is safe and healthful for the employees therein.”

23 35. As discussed herein, Defendants did not incorporate adequate safeguards to
24 protect the Aggrieved Employees from the dangers of SARS-CoV-2 and potential infection with
25 COVID-19. Moreover, Defendants did not adopt and use practices or other processes to render
26 the workplace safe from the dangers of SARS-CoV-2 and COVID-19 infection.

27 36. Additionally, Defendants failed to implement other, non-COVID-related, safety
28 protocols. For instance, Defendants required its employees to periodically conduct inspections

1 of the premises, including the roof of the building. However, the roof did not have any railing
2 and there were no fall protection measures enacted by Defendants, despite the risk of serious
3 injury. Also, the Aggrieved Employees were often exposed to risk of shock and electrocution
4 because the roof leaked water into and through the light fixtures.

5 37. Based on the facts alleged herein, Defendants violated Labor Code § 6400(a) as to
6 each Aggrieved Employee and for each pay period.

7 38. Plaintiff further alleges that Defendants' conduct constitutes a "serious violation"
8 as used in Labor Code § 6428. Moreover, Plaintiff alleges that these violations also constitute
9 "willful" and "repeated" violations as used in Labor Code § 6429, as Defendants knew that
10 Plaintiff and the Aggrieved Employees were entitled to receive the benefits and protections of
11 the Labor Code and Cal/OSHA Safety and Health Standards, yet Defendants chose not to
12 comply with the relevant requirements.

13 39. As a result of the unlawful practices alleged herein, Plaintiff seeks the assessment
14 of all applicable and available PAGA remedies including, without limitation, those available
15 under Labor Code §§ 2699(a), 6427, 6428, 6429, 6430, and 2699(f). Plaintiff also seeks to
16 recover all attorneys' fees, costs, and any other damages permitted under the PAGA.

17 **SECOND CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR VIOLATION OF LABOR CODE § 6401**

19 (Labor Code § 6401)

20 *As Against All Defendants*

21 40. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
22 alleged herein.

23 41. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
24 that did not receive the benefits and protections of the Labor Code and Cal/OSHA Safety and
25 Health Standards.

26 42. Labor Code § 6401 states: "Every employer shall furnish and use safety devices
27 and safeguards, and shall adopt and use practices, means, methods, operations, and processes
28 which are reasonably adequate to render such employment and place of employment safe and

1 healthful. Every employer shall do every other thing reasonably necessary to protect the life,
2 safety, and health of employees.”

3 43. As discussed herein, Defendants did not incorporate adequate safeguards to
4 protect the Aggrieved Employees from the dangers of SARS-CoV-2 and potential infection with
5 COVID-19. Moreover, Defendants did not adopt and use practices or other processes to render
6 the workplace safe from the dangers of SARS-CoV-2 and COVID-19 infection.

7 44. Additionally, Defendants failed to implement other, non-COVID-related, safety
8 protocols. For instance, Defendants required its employees to periodically conduct inspections
9 of the premises, including the roof of the building. However, the roof did not have any railing
10 and there were no fall protection measures enacted by Defendants, despite the risk of serious
11 injury. Also, the Aggrieved Employees were often exposed to risk of shock and electrocution
12 because the roof leaked water into and through the light fixtures.

13 45. Based on the facts alleged herein, Defendants violated Labor Code § 6401 as to
14 each Aggrieved Employee and for each pay period.

15 46. Plaintiff further alleges that Defendants’ conduct constitutes a “serious violation”
16 as used in Labor Code § 6428. Moreover, Plaintiff alleges that these violations also constitute
17 “willful” and “repeated” violations as used in Labor Code § 6429, as Defendants knew that
18 Plaintiff and the Aggrieved Employees were entitled to receive the benefits and protections of
19 the Labor Code and Cal/OSHA Safety and Health Standards, yet Defendants chose not to
20 comply with the relevant requirements.

21 47. As a result of the unlawful practices alleged herein, Plaintiff seeks the assessment
22 of all applicable and available PAGA remedies including, without limitation, those available
23 under Labor Code §§ 2699(a), 6427, 6428, 6429, 6430, and 2699(f). Plaintiff also seeks to
24 recover all attorneys’ fees, costs, and any other damages permitted under the PAGA.

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1 **THIRD CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR VIOLATION OF LABOR CODE § 6402**

3 (Labor Code § 6402)

4 *As Against All Defendants*

5 48. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 49. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 that did not receive the benefits and protections of the Labor Code and Cal/OSHA Safety and
9 Health Standards.

10 50. Labor Code § 6402 states: “No employer shall require, or permit any employee to
11 go or be in any employment or place of employment which is not safe and healthful.”

12 51. As discussed herein, Defendants did not incorporate adequate safeguards to
13 protect the Aggrieved Employees from the dangers of SARS-CoV-2 and potential infection with
14 COVID-19. Thus, Defendants required and permitted the Aggrieved Employees to be in a place
15 of employment which is not safe and unhealthful.

16 52. Additionally, Defendants failed to implement other, non-COVID-related, safety
17 protocols. For instance, Defendants required its employees to periodically conduct inspections
18 of the premises, including the roof of the building. However, the roof did not have any railing
19 and there were no fall protection measures enacted by Defendants, despite the risk of serious
20 injury. Also, the Aggrieved Employees were often exposed to risk of shock and electrocution
21 because the roof leaked water into and through the light fixtures.

22 53. Based on the facts alleged herein, Defendants violated Labor Code § 6402 as to
23 each Aggrieved Employee and for each pay period.

24 54. Plaintiff further alleges that Defendants’ conduct constitutes a “serious violation”
25 as used in Labor Code § 6428. Moreover, Plaintiff alleges that these violations also constitute
26 “willful” and “repeated” violations as used in Labor Code § 6429, as Defendants knew that
27 Plaintiff and the Aggrieved Employees were entitled to receive the benefits and protections of
28 the Labor Code and Cal/OSHA Safety and Health Standards, yet Defendants chose not to

1 comply with the relevant requirements.

2 55. As a result of the unlawful practices alleged herein, Plaintiff seeks the assessment
3 of all applicable and available PAGA remedies including, without limitation, those available
4 under Labor Code §§ 2699(a), 6427, 6428, 6429, 6430, and 2699(f). Plaintiff also seeks to
5 recover all attorneys' fees, costs, and any other damages permitted under the PAGA.

6 **FOURTH CAUSE OF ACTION**

7 **PAGA ASSESSMENT FOR VIOLATION OF LABOR CODE § 6403**

8 (Labor Code § 6403)

9 *As Against All Defendants*

10 56. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
11 alleged herein.

12 57. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
13 that did not receive the benefits and protections of the Labor Code and Cal/OSHA Safety and
14 Health Standards.

15 58. Labor Code § 6403 states: "No employer shall fail or neglect to do any of the
16 following: (a) To provide and use safety devices and safeguards reasonably adequate to render
17 the employment and place of employment safe. (b) To adopt and use methods and processes
18 reasonably adequate to render the employment and place of employment safe. (c) To do every
19 other thing reasonably necessary to protect the life, safety, and health of employees."

20 59. As discussed herein, Defendants did not incorporate adequate safeguards to
21 protect the Aggrieved Employees from the dangers of SARS-CoV-2 and potential infection with
22 COVID-19, including the failure to implement necessary safety and sanitization protocols, as
23 well as the failure to provide safety devices and safeguards such as proper PPE.

24 60. Additionally, Defendants failed to implement other, non-COVID-related, safety
25 protocols. For instance, Defendants required its employees to periodically conduct inspections
26 of the premises, including the roof of the building. However, the roof did not have any railing
27 and there were no fall protection measures enacted by Defendants, despite the risk of serious
28 injury. Also, the Aggrieved Employees were often exposed to risk of shock and electrocution

1 because the roof leaked water into and through the light fixtures.

2 61. Based on the facts alleged herein, Defendants violated Labor Code § 6403 as to
3 each Aggrieved Employee and for each pay period.

4 62. Plaintiff further alleges that Defendants' conduct constitutes a "serious violation"
5 as used in Labor Code § 6428. Moreover, Plaintiff alleges that these violations also constitute
6 "willful" and "repeated" violations as used in Labor Code § 6429, as Defendants knew that
7 Plaintiff and the Aggrieved Employees were entitled to receive the benefits and protections of
8 the Labor Code and Cal/OSHA Safety and Health Standards, yet Defendants chose not to
9 comply with the relevant requirements.

10 63. As a result of the unlawful practices alleged herein, Plaintiff seeks the assessment
11 of all applicable and available PAGA remedies including, without limitation, those available
12 under Labor Code §§ 2699(a), 6427, 6428, 6429, 6430, and 2699(f). Plaintiff also seeks to
13 recover all attorneys' fees, costs, and any other damages permitted under the PAGA.

14 **FIFTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR VIOLATION OF LABOR CODE § 6404**

16 (Labor Code § 6404)

17 *As Against All Defendants*

18 64. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
19 alleged herein.

20 65. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
21 that did not receive the benefits and protections of the Labor Code and Cal/OSHA Safety and
22 Health Standards.

23 66. Labor Code § 6404 states: "No employer shall occupy or maintain any place of
24 employment that is not safe and healthful."

25 67. As discussed herein, Defendants did not incorporate adequate safeguards to
26 protect the Aggrieved Employees from the dangers of SARS-CoV-2 and potential infection with
27 COVID-19, including the failure to implement necessary safety and sanitization protocols, as
28 well as the failure to provide safety devices and safeguards such as proper PPE.

1 68. Additionally, Defendants failed to implement other, non-COVID-related, safety
2 protocols. For instance, Defendants required its employees to periodically conduct inspections
3 of the premises, including the roof of the building. However, the roof did not have any railing
4 and there were no fall protection measures enacted by Defendants, despite the risk of serious
5 injury. Also, the Aggrieved Employees were often exposed to risk of shock and electrocution
6 because the roof leaked water into and through the light fixtures.

7 69. Based on the facts alleged herein, Defendants violated Labor Code § 6404 as to
8 each Aggrieved Employee and for each pay period.

9 70. Plaintiff further alleges that Defendants' conduct constitutes a "serious violation"
10 as used in Labor Code § 6428. Moreover, Plaintiff alleges that these violations also constitute
11 "willful" and "repeated" violations as used in Labor Code § 6429, as Defendants knew that
12 Plaintiff and the Aggrieved Employees were entitled to receive the benefits and protections of
13 the Labor Code and Cal/OSHA Safety and Health Standards, yet Defendants chose not to
14 comply with the relevant requirements.

15 71. As a result of the unlawful practices alleged herein, Plaintiff seeks the assessment
16 of all applicable and available PAGA remedies including, without limitation, those available
17 under Labor Code §§ 2699(a), 6427, 6428, 6429, 6430, and 2699(f). Plaintiff also seeks to
18 recover all attorneys' fees, costs, and any other damages permitted under the PAGA.

19 **SIXTH CAUSE OF ACTION**

20 **PAGA ASSESSMENT FOR VIOLATION OF LABOR CODE § 6401.7**

21 (Labor Code § 6401.7)

22 *As Against All Defendants*

23 72. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
24 alleged herein.

25 73. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
26 that did not receive the benefits and protections of the Labor Code and Cal/OSHA Safety and
27 Health Standards.

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1 74. Labor Code § 6401.7(a) states: “Every employer shall establish, implement, and
2 maintain an effective injury prevention program. The program shall be written, except as
3 provided in subdivision (e), and shall include, but not be limited to, the following elements:
4 (1) Identification of the person or persons responsible for implementing the program. (2) The
5 employer’s system for identifying and evaluating workplace hazards, including scheduled
6 periodic inspections to identify unsafe conditions and work practices. (3) The employer’s
7 methods and procedures for correcting unsafe or unhealthy conditions and work practices in a
8 timely manner. (4) An occupational health and safety training program designed to instruct
9 employees in general safe and healthy work practices and to provide specific instruction with
10 respect to hazards specific to each employee’s job assignment. (5) The employer’s system for
11 communicating with employees on occupational health and safety matters, including provisions
12 designed to encourage employees to inform the employer of hazards at the worksite without fear
13 of reprisal. (6) The employer’s system for ensuring that employees comply with safe and healthy
14 work practices, which may include disciplinary action.”

15 75. Here, Plaintiff alleges that Defendants have not established, implemented, and
16 maintained an “effective injury prevention program” as required by Labor Code § 6401.7.
17 Further, Plaintiff alleges that any program Defendants may have does not comply with the
18 subparts of § 6401.7(a)(1)-(6).

19 76. Moreover, Plaintiff alleges that she was not trained in a compliant injury
20 prevention program, as required by Labor Code § 6401.7(c) and that Defendants have failed to
21 keep track of appropriate records of steps taken to implement and maintain the program as
22 required by § 6401.7(d).

23 77. Based on the facts alleged herein, Defendants violated Labor Code § 6401.7 as to
24 each Aggrieved Employee and for each pay period.

25 78. Plaintiff further alleges that Defendants’ conduct constitutes a “serious violation”
26 as used in Labor Code § 6428. Moreover, Plaintiff alleges that these violations also constitute
27 “willful” and “repeated” violations as used in Labor Code § 6429, as Defendants knew that
28 Plaintiff and the Aggrieved Employees were entitled to receive the benefits and protections of

1 the Labor Code and Cal/OSHA Safety and Health Standards, yet Defendants chose not to
2 comply with the relevant requirements.

3 79. As a result of the unlawful practices alleged herein, Plaintiff seeks the assessment
4 of all applicable and available PAGA remedies including, without limitation, those available
5 under Labor Code §§ 2699(a), 6427, 6428, 6429, 6430, and 2699(f). Plaintiff also seeks to
6 recover all attorneys' fees, costs, and any other damages permitted under the PAGA.

7 **SEVENTH CAUSE OF ACTION**

8 **PAGA ASSESSMENT FOR VIOLATION OF LABOR CODE § 6407**

9 (Labor Code § 6407)

10 *As Against All Defendants*

11 80. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
12 alleged herein.

13 81. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
14 that did not receive the benefits and protections of the Labor Code and Cal/OSHA Safety and
15 Health Standards.

16 82. Labor Code § 6407 states: "Every employer and every employee shall comply
17 with occupational safety and health standards, with Section 25910 of the Health and Safety
18 Code, and with all rules, regulations, and orders pursuant to this division which are applicable to
19 his own actions and conduct."

20 83. As discussed herein, Defendants did not incorporate adequate safeguards to
21 protect the Aggrieved Employees from the dangers of SARS-CoV-2 and potential infection with
22 COVID-19, including the failure to implement necessary safety and sanitization protocols, as
23 well as the failure to provide safety devices and safeguards such as proper PPE.

24 84. Additionally, Defendants failed to implement other, non-COVID-related, safety
25 protocols. For instance, Defendants required its employees to periodically conduct inspections
26 of the premises, including the roof of the building. However, the roof did not have any railing
27 and there were no fall protection measures enacted by Defendants, despite the risk of serious
28 injury. Also, the Aggrieved Employees were often exposed to risk of shock and electrocution

1 because the roof leaked water into and through the light fixtures.

2 85. Plaintiff alleges that, based on the facts herein, Defendants have failed to comply
3 with occupational safety and health standards enacted in Cal. Code Regs. Tit. 8, § 3202 (“[t]here
4 orders establish minimum standards and apply to all employments and places of employment in
5 California as defined b Labor Code Section 6303”).

6 86. Specifically, Plaintiff alleges that Defendants’ policies and practices violate the
7 Safety and Health Standards set by Cal/OSHA, including:

8 a. Cal. Code Regs. Tit. 8, § 3203 (requiring employers to have a written
9 Injury and Illness Prevention Program to protect employees from hazards and illness).

10 b. Cal. Code Regs. Tit. 8, § 3366 (requiring that washing facilities be
11 maintained in a sanitary condition).

12 c. Cal. Code Regs. Tit. 8, § 3380 (requiring employers to conduct a hazard
13 assessment to determine if COVID-19 is a hazard in the workplace that necessitates the use of
14 PPE, to provide employees with properly fitting PPE, and to ensure that PPE is maintained in a
15 “safe, sanitary condition”).

16 d. Cal. Code Regs. Tit. 8, § 5141 (requiring employers to use controls to
17 prevent the harmful exposure of hazardous substances to employees).

18 e. Cal. Code Regs. Tit. 8, § 8414 (requiring that PPE be maintained in good
19 operating and sanitary condition, with records kept of the issuance of PPE to each employee).

20 87. Based on the facts alleged herein, and due to Defendants’ failure to comply with
21 occupational safety and health standards enacted under the Cal. Code of Regulations, Defendants
22 violated Labor Code § 6407 as to each Aggrieved Employee and for each pay period.

23 88. Plaintiff further alleges that Defendants’ conduct constitutes a “serious violation”
24 as used in Labor Code § 6428. Moreover, Plaintiff alleges that these violations also constitute
25 “willful” and “repeated” violations as used in Labor Code § 6429, as Defendants knew that
26 Plaintiff and the Aggrieved Employees were entitled to receive the benefits and protections of
27 the Labor Code and Cal/OSHA Safety and Health Standards, yet Defendants chose not to
28 comply with the relevant requirements.

1 89. As a result of the unlawful practices alleged herein, Plaintiff seeks the assessment
2 of all applicable and available PAGA remedies including, without limitation, those available
3 under Labor Code §§ 2699(a), 6427, 6428, 6429, 6430, and 2699(f). Plaintiff also seeks to
4 recover all attorneys' fees, costs, and any other damages permitted under the PAGA.

5 **VII. CIVIL PENALTIES AVAILABLE UNDER PAGA**

6 90. Labor Code § 2699(a) specifically authorizes Plaintiff, through this PAGA action,
7 to seek civil penalties that would otherwise be assessed and collected by the State of California.

8 91. In this regard, the Labor Code provides specific civil penalty provisions for
9 violations of occupational safety or health standards.

10 92. For instance, for violations deemed "minor," Labor Code § 6427(a) states: "Any
11 employer who violates any occupational safety or health standard, order, or special order, or
12 Section 25910 of the Health and Safety Code, and the violation is specifically determined not to
13 be of a serious nature, may be assessed a civil penalty of up to [\$12,471] for each violation."
14 And § 6427(b) states that the maximum penalty shall be increased on a yearly basis
15 "[c]ommencing on January 1, 2018."

16 93. Labor Code § 6428 controls for "serious" violations, and states: "Any employer
17 who violates any occupational safety or health standard, order, or special order, or Section 25910
18 of the Health and Safety Code, if that violation is a serious violation, shall be assessed a civil
19 penalty of up to [\$25,000] for each violation. Employers who do not have an operative injury
20 prevention program shall receive no adjustment for good faith of the employer or history of
21 previous violations as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319."

22 94. Additionally, Labor Code § 6429(a)(1) states that if an employer "willfully or
23 repeatedly any occupational safety or health standard, order, or special order, or Section 25910
24 of the Health and Safety Code, or any employer who commits an enterprise-wide violation as
25 specified in Section 6317, may be assessed a civil penalty of not more than [\$124,709] for each
26 violation, but in no case less than [\$8,908] for each willful violation." And § 6429(a)(2)
27 specifies that these penalties shall be increased on a yearly basis "[c]ommencing on January 1,
28 2018."

1 95. Labor Code § 6430(a) also provides as follows: “Any employer who fails to
2 correct a violation of any occupational safety or health standard, order, or special order, or
3 Section 25910 of the Health and Safety Code, within the period permitted for its correction shall
4 be assessed a civil penalty of not more than [\$15,000] for each day during which the failure or
5 violation continues.”

6 96. Therefore, under Labor Code § 2699(a), Plaintiff seeks the penalties specified
7 above on behalf of all Aggrieved Employees and the State of California.

8 97. In the alternative, and to the extent that any violation alleged herein does not carry
9 penalties under Labor Code § 2699(a), then Plaintiff seeks the “default” PAGA penalty specified
10 in Labor Code § 2699(f): “[\$100] for each aggrieved employee per pay period for the initial
11 violation and [\$200] for each aggrieved employee per pay period for each subsequent violation.”

12 **VIII. PRAYER FOR RELIEF**

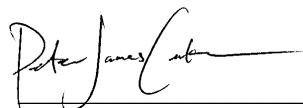
13 WHEREFORE, Plaintiff prays for judgment and relief against Defendants, jointly and
14 severally, as follows:

- 15 1. For the assessment of all remedies and/or penalties available under the PAGA;
16 2. For reasonable attorneys’ fees and costs of suit to the extent permitted by law; and
17 3. For such other and further relief as the Court deems just and proper.

18 Dated: March 31, 2022

LAUBY, MANKIN & LAUBY LLP

19
20 BY:



Brian J. Mankin, Esq.
Peter J. Carlson, Esq.
Attorneys for Plaintiff

EXHIBIT “A”



January 21, 2022

Sent Via Certified Mail and Online Filing (Email)

Cal/OSHA District Office
464 W. 4th Street, Suite 332
San Bernardino, CA 92401
DOSHSB@dir.ca.gov

Sent Via Certified Mail

California LWDA
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

Sent Via Certified Mail

Envision Foods, LLC
15401 Anacapa Road
Victorville, CA 92392

JIB Holdings I, LLC
15401 Anacapa Road
Victorville, CA 92392

Desert Jack, LLC
15401 Anacapa Road
Victorville, CA 92392

TNH Partners, LLC
15401 Anacapa Road
Victorville, CA 92392

Allied Restaurant Management, LLC
15401 Anacapa Road
Victorville, CA 92392

ENV Management, LLC
15401 Anacapa Road
Victorville, CA 92392

Re: Cal/OSHA Complaint
Mikayla Stewart v. Envision Foods, LLC, et al.

To the Division of Occupational Safety and Health,

Our firm represents employee Mikayla Stewart (“Claimant”) regarding her complaint of unsafe working conditions, in violation of California Labor Code §§ 6300, *et seq.*, while employed by entities that she alleges are joint employers: Envision Foods, LLC, JIB Holdings I, LLC, Desert Jack, LLC, TNH Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC (the “Company”). Specifically, pursuant to Labor Code § 2603, Claimant herein provides notice of health and safety violations under Labor Code §§ 6400, 6401, 6407.1, 6402, 6403, 6404, 6407, among possibly other sections inadvertently omitted, and/or sections of the applicable General Industry Safety Orders propagated by Cal/OSHA (Cal. Code of Regs. Tit. 8, § 3202).

FACTUAL BACKGROUND

Despite the serious health concerns that COVID-19 poses, the Company has failed to implement proper safety protocols. Claimant and other employees are fast food workers that performed essential services to customers while on the front lines of the COVID-19 pandemic. Yet the Company has denied Claimant and other employees a safe and healthful place of employment as required under California law and the Safety and Health Standards set forth by Cal/OSHA due to the violations described herein.

Claimant was employed by the Company from approximately January through August 2021 and worked for the Company at various Jack in the Box franchise locations, including but not limited to 40771 Village Dr., Big Bear, CA 92315. Claimant alleges that the lack of proper health and safety protocols and procedures are present at all of the Company's locations, and that the Company maintained the same policies and practices (or lack thereof) at all locations.

Due to the daily exposure to the general public, Claimant and other employees of the Company are constantly putting their lives at risk as they work in unsafe conditions. The Company does not impose or enforce sufficient regulations regarding social distancing among employees and customers and also has not imposed or enforced mask requirements for its customers. Furthermore, the lack of physical barriers between employees and customers (*e.g.*, the lack of a plexiglass barrier at the cash registers) allows customers to breath on Claimant and other Company employees, raising health and safety issues since the SARS-CoV-2 virus is passed through aerosolized droplets and/or airborne particulates.

Additionally, the Company failed to provide the employees with adequate personal protective equipment ("PPE"), as it only provided one face mask or shield per employee. The Company also made it clear that, if the employees lost or misplaced the one face mask or shield they provided, that the employee was required to purchase their own. So, in addition to the failure to provide adequate PPE, this policy also resulted in employees sharing face shields without proper sanitization.

On a similar note, the Company failed to routinely disinfect and clean frequently touched surfaces and spaces, such as those in the breakroom, in common areas, and in restrooms. And the Company also failed to routinely disinfect, clean, or have any protocol for the safety and sanitization of shared equipment such as cash registers, telephones, and headsets. Moreover, Claimant was not provided, nor has she seen, any written Company Illness Prevention protocol to combat and minimize the risk of COVID-19 infection. Furthermore, Claimant is unaware of any Company protocol that informs employees of potential contact and exposure to COVID-19 positive individuals.

Claimant also alleges that the Company failed to implement other, non-COVID-related, safety protocols. For instance, the Company required its employees to periodically conduct inspections of the premises, including the roof of the building. However, the roof did not have any railing and there were no fall protection measures enacted by the Company, despite the risk of serious injury. Also, the employees were often exposed to risk of shock and electrocution because the roof leaked water into and through the light fixtures.

As a result of the Company's policies and practices, Claimant and other employees are constantly subjected to health and safety violations under the California Labor Code and Cal/OSHA Safety and Health Standards, enumerated below.



VIOLATIONS OF LABOR CODE § 6400, et seq.

The Company's policies and practices regarding COVID-19 violated California Labor Code §§ 6400, 6402, and 6404 because the Company failed to furnish a place of employment that is safe and healthful for its employees and required and/or permitted its employees to be in an unsafe and unhealthful workplace.

Additionally, the Company violated Labor Code § 6401, which requires that every employer furnish and use safety devices and safeguards, and also to adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Furthermore, the Company failed to do every other thing reasonably necessary to protect the life, safety, and health of employees.

The Company also violated Labor Code § 6401.7 which requires every employer to establish, implement, and maintain an effective injury prevention program. Furthermore, the employer is required to correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard. Additionally, the employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard.

The Company continues to violate Labor Code § 6403 that states no employer shall fail or neglect to do any of the following: (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

Finally, the Company violated Labor Code § 6407 that requires that every employer and every employee to comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct. "General Industry Safety Orders propagated by Cal/OSHA establish minimum standards and apply to all employments and places of employments as defined by California Labor Code § 6303. Cal. Code of Regs. Tit. 8, § 3202.

VIOLATIONS OF CAL/OSHA SAFETY AND HEALTH STANDARDS

The Company's policies and practices regarding COVID-19 further violated Safety and Health Standards set forth by Cal/OSHA. For example, the Company violated Section 3203 that requires all employers to have a written Illness Prevention Program to protect employees from workplace hazards and to implement measures to prevent or reduce infection hazards and provide training thereon. Additionally, the Company violated Section 3366 requires employers to provide washing facilities. Furthermore, the Company violated Section 3380 that requires employers to conduct a hazard assessment to determine if COVID-19 is a hazard in the workplace that necessitates the use of PPE and provide exposed employees with properly fitting PPE. Moreover, the Company violated Section 5141 that requires employers to use controls to prevent the harmful exposure of hazardous substances to employees. Finally, the Company violated Section 8414 which requires employers to provide employees who are exposed to hazards in the workplace, which cannot be eliminated through engineering and administrative controls are not effective in eliminating the hazards, with PPE including head protection, hand protection, and body protection.



CONCLUSION

Based on the foregoing, the conditions at the Company's locations constituted and continue to constitute a hazard and serious danger to Claimant and other employees in that these conditions could reasonably be expected to cause death or serious harm through COVID-19.

The Company's willful and repeated of its duties to provide a safe and healthful workplace under the California Labor Code and Cal/OSHA endangers Claimant, his family, and the lives of the other employees and their families.

If Claimant becomes aware of any additional claims for Labor Code violations related to his employment with the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By:

Peter J. Carlson, Esq.

E-mail:

peter@lmfirm.com

