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13 and Nicolas Gonzalez

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

SEP 01 2020

STEPHANIE CAMERON, CLERK
BY: _____

ANNA L. LARA

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF TULARE COUNTY

16 GUILLERMO GONZALEZ and NICOLAS
17 GONZALEZ, individually, and on behalf of
18 other members of the general public
19 similarly situated,

20 Plaintiffs,

21 vs.

22 SUN PACIFIC FARMING
23 COOPERATIVE, INC., a California
24 corporation; SUN PACIFIC SHIPPERS,
25 L.P., a California limited partnership; SUN
26 PACIFIC MARKETING COOPERATIVE,
27 INC., a California corporation; and DOES 1
28 through 10, inclusive,

Defendants.

Case No.: VCU283014 BY FAX

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698,
ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226.7, 516, 1198, and California Code of Regulations Title 8, Section 3395 (Failure to Provide Heat Recovery Periods);
- (6) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon

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- Termination);
- (8) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
 - (9) Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11140 Subdivision 5(A) (Failure to Provide Reporting Time Pay);
 - (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
 - (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
 - (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiffs Guillermo Gonzalez and Nicolas Gonzalez, individually and on behalf of all
2 other members of the public similarly situated, and as aggrieved employees and on behalf of
3 all other aggrieved employees, allege as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiffs, the State of California, and
8 other current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiffs’
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiffs' claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court because Defendants employ persons in this
5 county, and employed Plaintiffs this county, and thus a substantial portion of the transactions
6 and occurrences related to this action occurred in this county.

7 **THE PARTIES**

8 4. Plaintiff Guillermo Gonzalez ("G. Gonzalez") is a resident of Exeter, in Tulare
9 County, California. Defendants employed Plaintiff G. Gonzalez as an hourly paid, non-
10 exempt Spray Operator from approximately March 2000 to January 2020. Plaintiff G.
11 Gonzalez worked for Defendants at their location in Lindsay, California. During his
12 employment, Plaintiff G. Gonzalez typically worked eight (8) to twelve (12) hours or more
13 per day and five (5) days per week. Plaintiff G. Gonzalez's primary job duties included,
14 without limitation, operating agricultural machinery; mixing, loading, and applying pesticides
15 onto fields; and maintaining equipment and work areas.

16 5. Plaintiff Nicolas Gonzalez ("N. Gonzalez") is a resident of Exeter, in Tulare
17 County, California. Defendants employed Plaintiff N. Gonzalez as an hourly paid, non-
18 exempt Spray Operator from approximately 2000 to February 2020. Plaintiff N. Gonzalez
19 worked for Defendants at their location in Lindsay, California. During his employment,
20 Plaintiff N. Gonzalez typically worked eight (8) to twelve (12) hours or more per day and five
21 (5) days per week. Plaintiff N. Gonzalez's primary job duties included, without limitation,
22 operating agricultural machinery; mixing, loading, and applying pesticides onto fields; and
23 maintaining equipment and work areas.

24 6. SUN PACIFIC FARMING COOPERATIVE, INC. was and is, upon
25 information and belief, a California corporation, and at all times hereinafter mentioned, an
26 employer whose employees are engaged throughout this county, the State of California, or the
27 various states of the United States of America.

28 7. SUN PACIFIC SHIPPERS, L.P. was and is, upon information and belief, a

1 California limited partnership, and at all times hereinafter mentioned, an employer whose
2 employees are engaged throughout this county, the State of California, or the various states of
3 the United States of America.

4 8. SUN PACIFIC MARKETING COOPERATIVE, INC. was and is, upon
5 information and belief, a California corporation, and at all times hereinafter mentioned, an
6 employer whose employees are engaged throughout this county, the State of California, or the
7 various states of the United States of America.

8 9. Plaintiffs are unaware of the true names or capacities of the Defendants sued
9 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
10 amend the complaint and serve such fictitiously named Defendants once their names and
11 capacities become known.

12 10. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
13 were the partners, agents, owners, or managers of SUN PACIFIC FARMING
14 COOPERATIVE, INC.; SUN PACIFIC SHIPPERS, L.P.; and SUN PACIFIC MARKETING
15 COOPERATIVE, INC. at all relevant times.

16 11. Plaintiffs are informed and believe, and thereon allege, that each and all of the
17 acts and omissions alleged herein was performed by, or is attributable to, SUN PACIFIC
18 FARMING COOPERATIVE, INC. SUN PACIFIC SHIPPERS, L.P.; SUN PACIFIC
19 MARKETING COOPERATIVE, INC.; and/or DOES 1 through 10 (collectively,
20 “Defendants” or “SUN PACIFIC”), each acting as the agent, employee, alter ego, and/or joint
21 venturer of, or working in concert with, each of the other co-Defendants and was acting within
22 the course and scope of such agency, employment, joint venture, or concerted activity with
23 legal authority to act on the others’ behalf. The acts of any and all Defendants were in
24 accordance with, and represent, the official policy of Defendants.

25 12. At all relevant times, Defendants, and each of them, ratified each and every act
26 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
27 and abetted the acts and omissions of each and all the other Defendants in proximately causing
28 the damages herein alleged.

1 13. Plaintiffs are informed and believe, and thereon allege, that each of said
2 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
3 omissions, occurrences, and transactions alleged herein.

4 14. Under California law, Defendants are jointly and severally liable as employers
5 for the violations alleged herein because they have each exercised sufficient control over the
6 wages, hours, working conditions, and employment status of Plaintiffs and class members.
7 Each Defendant had the power to hire and fire Plaintiffs and class members, supervised and
8 controlled their work schedule and/or conditions of employment, determined their rate of pay,
9 and maintained their employment records. Defendants suffered or permitted Plaintiffs and
10 class members to work and/or “engaged” Plaintiffs and class members so as to create a
11 common-law employment relationship. As joint employers of Plaintiffs and class members,
12 Defendants are jointly and severally liable for the civil penalties available to Plaintiffs and
13 class members under the law.

14 15. Plaintiffs are informed and believe, and thereon allege, that at all relevant
15 times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs
16 and class members because Defendants have:

- 17 (a) jointly exercised meaningful control over the work performed by
18 Plaintiffs and class members;
- 19 (b) jointly exercised meaningful control over Plaintiffs’ and class members’
20 wages, hours, and working conditions, including the quantity, quality
21 standards, speed, scheduling, and operative details of the tasks
22 performed by Plaintiffs and class members;
- 23 (c) jointly required that Plaintiffs and class members perform work which is
24 an integral part of Defendants’ businesses; and
- 25 (d) jointly exercised control over Plaintiffs and class members as a matter
26 of economic reality in that Plaintiffs and class members were dependent
27 on Defendants, who shared the power to set the wages of Plaintiffs and
28 class members and determined their working conditions, and who

1 jointly reaped the benefits from the underpayment of their wages and
2 noncompliance with other statutory provisions governing their
3 employment.

4 16. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
5 there has existed a unity of interest and ownership between Defendants such that any
6 individuality and separateness between the entities has ceased.

7 17. SUN PACIFIC FARMING COOPERATIVE, INC.; SUN PACIFIC
8 SHIPPERS, L.P.; SUN PACIFIC MARKETING COOPERATIVE, INC.; and DOES 1
9 through 10 are therefore alter egos of each other.

10 18. Adherence to the fiction of the separate existence of Defendants would permit
11 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
12 from liability for the wrongful acts committed by them under the name SUN PACIFIC.

13 19. Plaintiffs further allege, upon information and belief, that Defendants SUN
14 PACIFIC FARMING COOPERATIVE, INC.; SUN PACIFIC SHIPPERS, L.P.; and SUN
15 PACIFIC MARKETING COOPERATIVE, INC. are alter egos of each other for the following
16 reasons:

17 (a) According to documents filed with the California Secretary of State's
18 website (<https://businesssearch.sos.ca.gov/>), Berne H. Evans, III serves
19 as the President of SUN PACIFIC FARMING COOPERATIVE, INC.,
20 Chief Executive Officer of SUN PACIFIC MARKETING
21 COOPERATIVE, INC., and as the Agent for Service of Process for
22 SUN PACIFIC SHIPPERS, L.P.; and

23 (b) On information and belief, SUN PACIFIC FARMING
24 COOPERATIVE, INC.; SUN PACIFIC SHIPPERS, L.P.; and SUN
25 PACIFIC MARKETING COOPERATIVE, INC. utilize the same
26 standardized employment forms and issue the same employment
27 policies.

28 //

GENERAL ALLEGATIONS

20. Defendants are one of the largest produce growers in California that own and manage over 30,000 acres of agricultural land. Defendants are vertically integrated and responsible for the planting, harvesting, packing, shipping, and selling/marketing of their produce. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Exeter, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

21. In particular, Plaintiffs and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions.

22. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Exeter, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiffs and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee’s employment ends.

23. Defendants continue to employ non-exempt or hourly paid employees in California.

24. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

1 25. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class
2 members were not paid for all hours worked because all hours worked were not recorded.

3 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and class members were entitled to receive certain wages
5 for overtime compensation and that they were not receiving certain wages for overtime
6 compensation.

7 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
8 should have known that Plaintiffs and class members were entitled to receive at least
9 minimum wages for compensation and that they were not receiving at least minimum wages
10 for work that was required to be done off-the-clock. In violation of the California Labor
11 Code, Plaintiffs and class members were not paid at least minimum wages for work done off-
12 the-clock.

13 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and class members were entitled to meal periods in
15 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
16 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
17 periods and that Plaintiffs and class members were not provided with all meal periods or
18 payment of one (1) additional hour of pay at their regular rates of pay when they did not
19 receive a timely, uninterrupted, thirty (30) minute meal period.

20 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known that Plaintiffs and class members were entitled to rest periods in
22 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
23 additional hour of pay at their regular rates of pay when they were not authorized and
24 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiffs
25 and class members were not authorized and permitted to take compliant rest periods, nor did
26 Defendants provide Plaintiffs and class members with payment of one (1) additional hour of
27 pay at their regular rates of pay when they were not authorized and permitted to take a
28 compliant rest period.

1 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and class members were entitled to recovery periods in
3 accordance with the Labor Code and applicable General Industry Safety Order or payment of
4 one (1) additional hour of pay at their regular rates of pay when they were not provided a
5 compliant recovery period. In violation of the California Labor Code, Plaintiffs and class
6 members were not provided compliant recovery periods, nor did Defendants provide Plaintiffs
7 and class members with payment of one (1) additional hour of pay at their regular rates of pay
8 when they were not provided a compliant recovery period.

9 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that Plaintiffs and class members were entitled to receive complete and
11 accurate wage statements in accordance with California law. In violation of the California
12 Labor Code, Plaintiffs and class members were not provided complete and accurate wage
13 statements.

14 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that they had a duty to maintain accurate and complete payroll records in
16 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
17 and intentionally failed to do so.

18 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and class members were entitled to timely payment of all
20 wages earned upon termination of employment. In violation of the California Labor Code,
21 Plaintiffs and class members did not receive payment of all wages due, including, but not
22 limited to, overtime wages; minimum wages; meal, rest, and recovery period premium wages;
23 and reporting time pay, within permissible time periods.

24 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and class members were entitled to timely payment of
26 wages during their employment. In violation of the California Labor Code, Plaintiffs and
27 class members did not receive payment of all wages, including, but not limited to, overtime
28 wages; minimum wages; meal, rest, and recovery period premium wages; and reporting time

1 pay, within permissible time periods.

2 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
3 should have known that Plaintiffs and class members were entitled to be paid reporting time
4 pay when they reported to work for their scheduled shift but were put to work for less than
5 half of the regular schedule. In violation of the California Labor Code, Defendants did not
6 pay Plaintiffs and class members all reporting time pay due.

7 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
8 should have known that Plaintiffs and class members were entitled to be paid a split-shift
9 premium when they returned to work for an additional shift in the same day, after having been
10 clocked out for more than an hour.

11 37. Plaintiffs are informed and believe, and thereon allege, that at all times herein
12 mentioned, Defendants knew or should have known that they had a duty to compensate
13 Plaintiffs and class members for all hours worked, and that Defendants had the financial
14 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,
15 and falsely represented to Plaintiffs and class members that they were properly denied wages,
16 all in order to increase Defendants' profits.

17 **PAGA REPRESENTATIVE ALLEGATIONS**

18 38. At all times herein set forth, PAGA provides that any provision of law under
19 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
20 assessed and collected by the LWDA for violations of the California Labor Code and
21 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
22 civil action brought on behalf of themselves and other current or former employees pursuant
23 to procedures outlined in California Labor Code section 2699.3.

24 39. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
25 person who was employed by the alleged violator and against whom one or more of the
26 alleged violations was committed."

27 40. Plaintiffs and other current and former employees of Defendants are "aggrieved
28 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current

1 or former employees and one or more of the alleged violations were committed against them.

2 41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
3 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
4 following requirements have been met:

- 5 (a) The aggrieved employee or representative shall give written notice by
6 online filing with the LWDA and by certified mail to the employer of
7 the specific provisions of the California Labor Code alleged to have
8 been violated, including the facts and theories to support the alleged
9 violation.
- 10 (b) An aggrieved employee's notice filed with the LWDA pursuant to
11 2699.3(a) and any employer response to that notice shall be
12 accompanied by a filing fee of seventy-five dollars (\$75).
- 13 (c) The LWDA shall notify the employer and the aggrieved employee or
14 representative by certified mail that it does not intend to investigate the
15 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
16 the postmark date of the aggrieved employee's notice. Upon receipt of
17 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
18 (65) calendar days of the postmark date of the aggrieved employee's
19 notice, the aggrieved employee may commence a civil action pursuant
20 to California Labor Code section 2699 to recover civil penalties.

21 42. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
22 through Plaintiffs, may pursue a civil action arising under PAGA for violations of any
23 provision other than those listed in Section 2699.5 after the following requirements have been
24 met:

- 25 (a) The aggrieved employee or representative shall give written notice by
26 online filing with the LWDA and by certified mail to the employer of
27 the specific provisions of the California Labor Code alleged to have
28 been violated (other than those listed in Section 2699.5), including the

1 facts and theories to support the alleged violation.

2 (b) An aggrieved employee's notice filed with the LWDA pursuant to
3 2699.3(c) and any employer response to that notice shall be
4 accompanied by a filing fee of seventy-five dollars (\$75).

5 (c) The employer may cure the alleged violation within thirty-three (33)
6 calendar days of the postmark date of the notice sent by the aggrieved
7 employee or representative. The employer shall give written notice
8 within that period of time by certified mail to the aggrieved employee or
9 representative and by online filing with the LWDA if the alleged
10 violation is cured, including a description of actions taken, and no civil
11 action pursuant to Section 2699 may commence. If the alleged violation
12 is not cured within the 33-day period, the aggrieved employee may
13 commence a civil action pursuant to Section 2699.

14 43. On May 29, 2020, Plaintiff G. Gonzalez provided written notice by online
15 filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the
16 California Labor Code alleged to have been violated, including facts and theories to support
17 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff G.
18 Gonzalez's written notice was accompanied with the applicable filing fee of seventy-five
19 dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff G. Gonzalez's
20 written notice and assigned Plaintiff G. Gonzalez PAGA Case Number LWDA-CM-791674-
21 20. A true and correct copy of Plaintiff G. Gonzalez's written notice to the LWDA and
22 Defendants is attached hereto as "Exhibit 1."

23 44. On May 29, 2020, Plaintiff N. Gonzalez provided written notice by online
24 filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the
25 California Labor Code alleged to have been violated, including facts and theories to support
26 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff N.
27 Gonzalez's written notice was accompanied with the applicable filing fee of seventy-five
28 dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff N. Gonzalez's

1 written notice and assigned Plaintiff N. Gonzalez PAGA Case Number LWDA-CM-791676-
2 20. A true and correct copy of Plaintiff N. Gonzalez's written notice to the LWDA and
3 Defendants is attached hereto as "Exhibit 2."

4 45. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
5 sent the notices described above to the LWDA, and the LWDA has not responded that it
6 intends to investigate Plaintiffs' claims and Defendants have not cured the violations.

7 46. Thus, Plaintiffs have satisfied the administrative prerequisites under California
8 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
9 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
10 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

11 47. Labor Code section 558(a) provides "[a]ny employer or other person acting on
12 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
13 provision regulating hours and days of work in any order of the Industrial Welfare
14 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
15 dollars (\$50) for each underpaid employee for each pay period for which the employee was
16 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
17 underpaid employee for each pay period for which the employee was underpaid" Labor
18 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
19 to any other civil or criminal penalty provided by law."

20 48. Defendants, at all times relevant to this complaint, were employers or persons
21 acting on behalf of an employer(s) who violated Plaintiffs' and other aggrieved employees'
22 rights by violating various sections of the California Labor Code as set forth above.

23 49. As set forth below, Defendants have violated numerous provisions of both the
24 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
25 Order.

26 50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
27 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as
28 private attorneys general, seek assessment and collection of civil penalties for themselves, all

1 other aggrieved employees, and the State of California against Defendants for violations of
2 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
3 1182.12, 1194, 1197, 1197.1, and 1198.

4 **CLASS ACTION ALLEGATIONS**

5 51. Plaintiffs bring this action on their own behalf, as well as on behalf of each and
6 all other persons similarly situated, and thus seek class certification under California Code of
7 Civil Procedure section 382.

8 52. All claims alleged herein arise under California law for which Plaintiffs seek
9 relief authorized by California law.

10 53. Plaintiffs' proposed class consists of and is defined as follows:

11 All persons who worked for Defendants as non-exempt, hourly
12 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

13 54. Plaintiffs' proposed subclass consists of and is defined as follows:

14 All persons who worked for Defendants as non-exempt, hourly
15 paid employees in California and who received at least one wage
16 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

17 55. Members of the Class and Subclass are referred to herein as "class members."

18 56. Plaintiffs reserve the right to redefine the Class and Subclass and to add
19 additional subclasses as appropriate based on further investigation, discovery, and specific
20 theories of liability.

21 57. There are common questions of law and fact as to class members that
22 predominate over questions affecting only individual members, including, but not limited to:

23 (a) Whether Defendants required Plaintiffs and class members to work over
24 the applicable maximum hours per day or maximum hours per week,
25 and failed to pay all legally required overtime compensation to Plaintiffs
26 and class members;

27 (b) Whether Defendants failed to pay Plaintiffs and class members at least
28 minimum wages for all hours worked;

- 1 (c) Whether Defendants failed to provide Plaintiffs and class members with
2 meal periods;
- 3 (d) Whether Defendants failed to authorize and permit Plaintiffs and class
4 members to take rest periods;
- 5 (e) Whether Defendants failed to provide Plaintiffs and class members with
6 recovery periods as required by California Labor Code section 226.7
7 and California Code of Regulations, Title 8, section 3395;
- 8 (f) Whether Defendants provided Plaintiffs and class members with
9 complete and accurate wage statements as required by California Labor
10 Code section 226(a);
- 11 (g) Whether Defendants maintained accurate payroll records as required by
12 California Labor Code section 1174(d);
- 13 (h) Whether Defendants failed to pay earned overtime wages; minimum
14 wages; meal, rest, and recovery period premium wages; and reporting
15 time pay due to Plaintiffs and class members upon their discharge;
- 16 (i) Whether Defendants failed timely to pay overtime wages; minimum
17 wages; meal, rest, and recovery period premium wages; and reporting
18 time pay to Plaintiffs and class members during their employment;
- 19 (j) Whether Defendants required Plaintiffs and class members to report to
20 work, but failed to provide them with work or provided them with less
21 than half their scheduled day's work, without properly compensating
22 them as required by California Code of Regulations, Title 8, section
23 11140, subsection 5;
- 24 (k) Whether Defendants required Plaintiffs and class members to return to
25 work for an additional shift in the same day, after having been clocked
26 out for more than an hour, without paying Plaintiffs and class members
27 an addition hour of pay at the minimum wage as required by California
28 Code of Regulations, Title 8, section 11140(4)(C);

- 1 (l) Whether Defendants engaged in unlawful and unfair business practices
2 in violation of California Business & Professions Code sections 17200,
3 *et seq.*; and
4 (m) The appropriate amount of damages, restitution, or monetary penalties
5 resulting from Defendants' violations of California law.

6 58. There is a well-defined community of interest in the litigation and the class
7 members are readily ascertainable:

- 8 (a) Numerosity: The class members are so numerous that joinder of all
9 members would be unfeasible and impractical. The membership of the
10 entire class is unknown to Plaintiffs at this time; however, the class is
11 estimated to be greater than one hundred (100) individuals and the
12 identity of such membership is readily ascertainable by inspection of
13 Defendants' employment records.
14 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately
15 protect the interests of each class member with whom they have a well-
16 defined community of interest, and Plaintiffs' claims (or defenses, if
17 any) are typical of all class members as demonstrated herein.
18 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately
19 protect the interests of each class member with whom they have a well-
20 defined community of interest and typicality of claims, as demonstrated
21 herein. Plaintiffs acknowledge that they have an obligation to make
22 known to the Court any relationship, conflicts or differences with any
23 class member. Plaintiffs' attorneys, the proposed class counsel, are
24 versed in the rules governing class action discovery, certification, and
25 settlement. Plaintiffs have incurred, and throughout the duration of this
26 action, will continue to incur costs and attorneys' fees that have been,
27 are, and will be necessarily expended for the prosecution of this action
28 for the substantial benefit of each class member.

1 (d) Superiority: The nature of this action makes the use of class action
2 adjudication superior to other methods. A class action will achieve
3 economies of time, effort, and expense as compared with separate
4 lawsuits, and will avoid inconsistent outcomes because the same issues
5 can be adjudicated in the same manner and at the same time for the
6 entire class.

7 (e) Public Policy Considerations: Employers in the State of California
8 violate employment and labor laws every day. Current employees are
9 often afraid to assert their rights out of fear of direct or indirect
10 retaliation. Former employees are fearful of bringing actions because
11 they believe their former employers might damage their future
12 endeavors through negative references and/or other means. Class
13 actions provide the class members who are not named in the complaint
14 with a type of anonymity that allows for the vindication of their rights
15 while simultaneously protecting their privacy.

16 **FIRST CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 18 **(Against all Defendants)**

19 59. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
20 and every allegation set forth above.

21 60. Labor Code section 1198 makes it illegal to employ an employee under
22 conditions of labor that are prohibited by the applicable wage order. California Labor Code
23 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
24 be the . . . standard conditions of labor for employees. The employment of any employee . . .
25 under conditions of labor prohibited by the order is unlawful.”

26 61. California Labor Code section 1198 and the applicable IWC Wage Order
27 provide that it is unlawful to employ persons without compensating them at a rate of pay
28 either time-and-one-half or two-times that person’s regular rate of pay, depending on the

1 number of hours worked by the person on a daily or weekly basis.

2 62. Specifically, the applicable IWC Wage Order provides that Defendants were
3 required to pay Plaintiffs and class members working more than ten (10) hours in a day or
4 more than sixty (60) hours in a workweek, at the rate of time and one-half (1½) for all hours
5 worked in excess of ten (10) hours in a day or more than sixty (60) hours in a workweek.
6 Starting January 1, 2019, Defendants were required to pay Plaintiffs and class members
7 working more than nine and one-half (9½) hours in a day or more than fifty-five (55) hours in
8 a workweek, at the rate of time and one-half (1½) for all hours worked in excess of nine and
9 one-half (9½) hours in a day or more than fifty-five (55) hours in a workweek. Starting
10 January 1, 2020, Defendants are and were required to pay Plaintiffs and class members
11 working more than nine (9) hours in a day or more than fifty (50) hours in a workweek, at the
12 rate of time and one-half (1½) for all hours worked in excess of nine (9) hours in a day or
13 more than fifty (50) hours in a workweek. An employee's regular rate of pay includes all
14 remuneration for employment paid to, or on behalf of, the employee, including shift
15 differential pay, nondiscretionary bonuses, and incentive pay.

16 63. California Labor Code section 510 codifies the right to overtime compensation
17 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
18 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
19 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
20 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
21 in a day on the seventh (7th) day of work.

22 64. During the relevant time period, Defendants willfully failed to pay all overtime
23 wages owed to Plaintiffs and class members. During the relevant time period, Plaintiffs and
24 class members were not paid overtime premiums for all of the hours they worked in excess of
25 the applicable maximum hours in a day and/or in excess of the applicable maximum hours in a
26 week, because all hours worked were not recorded.

27 65. First, during the relevant time period, Defendants had a company-wide "on-
28 call" policy, whereby they scheduled Plaintiffs and class members to work "on-call" overnight

1 shifts during the winter. During an “on-call” shift, Plaintiffs and class members had to be
2 available and report to work upon receiving a call from Defendants notifying them that they
3 were needed to protect produce from freezing. When scheduled to be “on-call,” Plaintiffs and
4 class members were in essence on controlled standby for Defendants because they could not
5 use that time freely for their own purposes and were forced to put their lives on hold. For
6 example, when assigned to “on-call” duty, Plaintiffs refrained from making plans because
7 they knew that they had to drop whatever they were doing at a moment’s notice if they
8 received a call from Defendants to report to work. However, Defendants failed to pay
9 Plaintiffs and class members for the time during which they were waiting to receive a call
10 from Defendants and unable to use their time for their own purposes.

11 66. Second, during the relevant period, Defendants had a company-wide policy
12 and/or practice of improperly rounding employee clock-in and clock-out duration times to the
13 nearest quarter-hour in their timekeeping system. Defendants’ written policy on employees’
14 timecards states “Please record actual time worked to the minute. Per Company policy, time
15 will be rounded to the nearest ¼ hour, except for meal periods.” Defendants’ rounding policy
16 resulted in the failure to compensate Plaintiffs and class members fully for all hours worked,
17 causing Plaintiffs and class members to not be paid overtime wages for all of the overtime
18 hours they actually worked. Upon information and belief, Defendants’ rounding policy has,
19 and continues to be, unfair and has, over time, resulted in the underpayment of wages to
20 Plaintiffs and class members. To the extent Defendants’ rounding policy took away time
21 worked that was eligible for overtime, Plaintiffs and class members were denied overtime pay
22 for all hours worked. Alternatively, Defendants had, and continue to have, a company-wide
23 policy and/or practice of failing to record hours worked by their employees. Instead, on
24 information and belief, Defendants’ policy and/or practice is to simply pay employees,
25 including Plaintiffs and class members, for the hours they are scheduled to work. Because
26 Defendants failed to accurately record their actual hours worked, Plaintiffs and class members
27 were not paid for all hours worked before or after their scheduled shifts.

28 67. Third, Defendants, on a company-wide basis, had a practice of failing to

1 schedule meal periods and/or failing to adhere to a schedule of meal periods, which caused
2 Plaintiffs and class members to not be relieved of their duties for compliant meal periods.
3 Additionally, Defendants had no policy for providing Plaintiffs and class members with meal
4 periods on days that they worked overnight shifts. As a result of these policies and/or
5 practices, Plaintiffs and class members were required to work through meal periods, in order
6 to complete their assigned tasks. Thus, Plaintiffs and class members performed work during
7 meal periods for which they were not paid.

8 68. Fourth, on information and belief, because Defendants frowned upon
9 employees accruing meal period penalties, when Plaintiffs and class members failed to clock
10 themselves out at their designated meal period start times, they were subject to Defendants
11 altering their time records and deducting time for meal periods that were not taken.
12 Alternatively, Defendants' management falsified employee time records by clocking out
13 Plaintiffs and class members at designated start and end times to reflect compliant meal
14 periods, regardless of whether they had received a compliant meal period or not, in order to
15 strictly limit meal penalties that Defendants would otherwise owe. Consequently, Plaintiffs
16 and class members performed work during meal periods for which they were not paid.

17 69. Defendants knew or should have known that as a result of these company-wide
18 practices and/or policies, Plaintiffs and class members were performing assigned duties off-
19 the-clock and during their meal periods, and were suffered or permitted to perform work for
20 which they were not paid. Because Plaintiffs and class members worked shifts of ten (10)
21 hours a day or more or sixty (60) hours a week or more; shifts of nine and one-half (9 ½)
22 hours a day or more or fifty-five (55) hours a week or more; and/or shifts of nine (9) hours a
23 day or more or fifty (50) hours a week or more, some of this off-the-clock work qualified for
24 overtime premium pay. Therefore, Plaintiffs and class members were not paid overtime
25 wages for all of the overtime hours they actually worked.

26 70. Defendants' failure to pay Plaintiffs and class members the balance of overtime
27 compensation as required by California law, violates the provisions of California Labor Code
28 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiffs and class

1 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
2 and attorneys' fees.

3 **SECOND CAUSE OF ACTION**

4 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 5 **Minimum Wages** 6 **(Against all Defendants)**

7 71. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
8 and every allegation set forth above.

9 72. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
10 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
11 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
12 fixed is unlawful. Compensable work time is defined in Wage Order No. 14 as "the time
13 during which an employee is subject to the control of an employer, and includes all the time
14 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
15 Regs. tit. 8, § 11140(2)(G) (defining "Hours Worked").

16 73. As stated, Defendants systematically, and on a company-wide basis, required
17 Plaintiffs and class members to work "on-call" shifts during which they had to put their lives
18 on hold and were restricted from using that time freely for their own purposes. Even though
19 Plaintiffs and class members were subject to Defendants' control during an "on-call" shift,
20 Defendants did not pay Plaintiffs and class members at least minimum wages for all hours that
21 they were suffered or permitted to work. As also described above, Defendants had a written
22 policy of rounding Plaintiffs' and class members' hourly clock-in and clock-out duration
23 times to the quarter-hour in their timekeeping system, resulting in the failure to compensate
24 Plaintiffs and class members fully for all hours worked. Alternatively, Defendants had a
25 company-wide policy and/or practice of only paying Plaintiffs and class members for their
26 scheduled shifts, rather than their actual hours worked, because Defendants failed to track
27 hours worked outside scheduled shifts.

28 74. Furthermore, as stated above, due to Defendants' failure to schedule meal

1 periods and/or failure to adhere to a schedule of meal periods, Plaintiffs and class members
2 were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise
3 not relieved of all duties during meal periods. Also, as stated, in order to prevent employees
4 from accruing meal period penalties, upon information and belief, Defendants' management
5 pressured employees to clock out for meal periods and/or adjusted employee time records to
6 reflect compliant meal periods, but required them to continue working, time for which they
7 were not paid.

8 75. Defendants did not pay minimum wages for off-the-clock hours that Plaintiffs
9 and class members worked through that qualified for overtime premium payment. To the
10 extent that these off-the-clock hours did not qualify for overtime premium payment,
11 Defendants did not pay at least minimum wages for those hours worked off-the-clock in
12 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

13 76. Defendants' failure to pay Plaintiffs and class members minimum wages
14 violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
15 California Labor Code section 1194.2, Plaintiffs and class members are entitled to recover
16 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

17 **THIRD CAUSE OF ACTION**

18 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period** 19 **Violations** 20 **(Against all Defendants)**

21 77. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
22 and every allegation set forth above.

23 78. At all relevant times herein set forth, California Labor Code section 512(a)
24 provides that an employer may not require, cause, or permit an employee to work for a period
25 of more than five (5) hours per day without providing the employee with a meal period of not
26 less than thirty (30) minutes, except that if the total work period per day of the employee is
27 not more than six (6) hours, the meal period may be waived by mutual consent of both the
28 employer and the employee. Under California law, first meal periods must start after no more

1 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
2 2012).

3 79. At all relevant times herein set forth, California Labor Code sections 226.7,
4 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
5 meal period mandated by an applicable order of the IWC.

6 80. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
7 the applicable IWC Wage Order also require employers to provide a second meal period of
8 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
9 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
10 hours worked is no more than twelve (12) hours, the second meal period may be waived by
11 mutual consent of the employer and the employee only if the first meal period was not waived.

12 81. First, as stated, Defendants had a practice of failing to schedule meal periods
13 and/or failing to adhere to a schedule of meal periods, which caused Plaintiffs and class
14 members to not be relieved of their duties for compliant meal periods. Defendants also
15 required Plaintiffs and class members to finish tasks within a tight deadline, such as spraying
16 assigned areas, before they were permitted to take meal periods. As a result, Plaintiffs and
17 class members would be forced to work in excess of five (5) hours before taking a meal
18 period. For example, during their employment, Plaintiffs would start their meal periods late in
19 order to complete their assigned tasks in compliance with Defendants' deadlines. As a further
20 example, some properties that Plaintiffs and class members worked on drew their water from a
21 well. Because the water was turned off at a certain time on these properties, Plaintiffs were
22 told to take their meal periods only after they completed their assignments before the
23 scheduled water shutoff time, and, as a result, took their meal periods after they worked in
24 excess of five (5) hours.

25 82. Second, Defendants had no policy for providing Plaintiffs and class members
26 with first or second meal periods when they worked overnight shifts. During the summer,
27 Defendants scheduled Plaintiffs and class members to work 12-hour shifts but did not provide
28 them with any meal periods at all. As a result of these policies and/or practices, Plaintiffs and

1 class members were not provided with uninterrupted 30-minute meal periods during shifts in
2 which they were entitled to receive first and second meal periods. Plaintiffs and class
3 members did not sign valid meal period waivers on days that they were entitled to meal
4 periods and were not relieved of all duties.

5 83. Third, because Defendants frowned upon employees accruing meal period
6 penalties, upon information and belief, Defendants' management would adjust employee time
7 records to reflect compliant meal periods, regardless of whether they had received a compliant
8 meal period, in order to strictly limit meal penalties that would need to be paid by Defendants.

9 84. At all times herein mentioned, Defendants knew or should have known that, as
10 a result of these policies, Plaintiffs and class members were prevented from being relieved of
11 all duties and required to perform some of their assigned duties during meal periods.
12 Defendants further knew or should have known that Defendants did not pay Plaintiffs and
13 class members meal period premium wages when meal periods were late, interrupted,
14 shortened, or missed.

15 85. Moreover, Defendants engaged in a company-wide practice and/or policy of
16 not paying all meal period premiums owed when compliant meal periods are not provided.
17 Because of Defendants' practices and/or policies, Plaintiffs and class members have not
18 received premium pay for all missed, late, and interrupted meal periods. As a result,
19 Defendants failed to provide Plaintiffs and class members compliant meal periods in violation
20 of California Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period
21 premiums due.

22 86. Defendants' conduct violates the applicable IWC Wage Order, and California
23 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and class members are therefore
24 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
25 rate of compensation for each work day that the meal period was not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**
3 **(Against all Defendants)**

4 87. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
5 and every allegation set forth above.

6 88. At all relevant times herein set forth, the applicable IWC Wage Order and
7 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and class
8 members' employment by Defendants.

9 89. At all relevant times, the applicable IWC Wage Order provides that "[e]very
10 employer shall authorize and permit all employees to take rest periods, which insofar as
11 practicable shall be in the middle of each work period" and that the "rest period time shall be
12 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
13 hours or major fraction thereof" unless the total daily work time is less than three and one-half
14 (3½) hours.

15 90. At all relevant times, California Labor Code section 226.7 provides that no
16 employer shall require an employee to work during any rest period mandated by an applicable
17 order of the California IWC. To comply with its obligation to authorize and permit rest
18 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
19 employer must "relinquish any control over how employees spend their break time, and
20 relieve their employees of all duties — including the obligation that an employee remain on
21 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
22 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
23 California Labor Code section 226.7(b), Plaintiffs and class members are entitled to recover
24 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
25 that a required rest period was not authorized and permitted.

26 91. As with meal periods, Defendants' company-wide practices, including failing
27 to schedule rest periods, which, coupled with Defendants' assignment of tight deadlines, led to
28 Plaintiffs and class members not being authorized and permitted to take compliant rest

1 periods. Defendants' management also threatened to discipline Plaintiffs and class members
2 whenever they were observed to not be actively working, which further prevented Plaintiffs
3 and class members from being relieved of all duty to take compliant rest periods.

4 92. Furthermore, during the relevant time period, Defendants maintained a
5 company-wide on-premises rest period policy, which mandated that Plaintiffs and class
6 members remain on Defendants' worksites during their rest periods. Because Plaintiffs and
7 class members were restricted from leaving the worksites during rest periods, they were
8 denied the ability to use their rest periods freely for their own purposes. Thus, Defendants
9 effectively maintained control over Plaintiffs and class members during rest periods.

10 93. As a result of Defendants' practices and policies, Plaintiffs and class members
11 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
12 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
13 during their employment, Plaintiffs missed their rest periods due to Defendants' failure to
14 schedule rest periods.

15 94. Defendants have also engaged in a systematic, company-wide practice and/or
16 policy of not paying rest period premiums owed when rest periods are not authorized and
17 permitted. As a result, Defendants denied Plaintiffs and class members rest periods and failed
18 to pay them rest period premium wages due, in violation of Labor Code section 226.7, 516,
19 and the applicable IWC Wage Order.

20 95. Defendants' conduct violates the applicable IWC Wage Order and California
21 Labor Code sections 226.7, 516, and 1198. Plaintiffs and class members are therefore entitled
22 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
23 compensation for each work day that a compliant rest period was not authorized and
24 permitted.

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1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226.7, 516, 1198, and California Code of**
3 **Regulations Title 8, Section 3395—Heat Recovery Period Violations**
4 **(Against all Defendants)**

5 96. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
6 and every allegation set forth above.

7 97. At all relevant times herein set forth, the applicable General Industry Safety
8 Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs’
9 and class members’ employment by Defendants.

10 98. At all relevant times, California Labor Code section 226.7(a) defines “recovery
11 period” to mean a cooldown period afforded an employee to prevent heat illness. California
12 Labor Code section 226.7 provides that no employer shall require an employee to work during
13 any recovery period mandated by an applicable order of the California IWC, the Occupational
14 Safety and Health Standards Board, or the Division of Occupational Safety and Health. The
15 applicable General Industry Safety Order provides that “[w]hen the outdoor temperature in the
16 work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more
17 areas with shade at all times while employees are present that are either open to the air or
18 provided with ventilation or cooling.” Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore,
19 “[t]he amount of shade present shall be at least enough to accommodate the number of
20 employees on recovery or rest periods, so that they can sit in a normal posture fully in the
21 shade without having to be in physical contact with each other.” *Id.* “Employees shall be
22 allowed and encouraged to take a preventative cool-down rest in the shade when they feel the
23 need to do so to protect themselves from overheating. Such access to shade shall be permitted
24 at all times.” *Id.* Pursuant to California Labor Code section 226.7(c), Plaintiffs and class
25 members are entitled to recover from Defendants one (1) additional hour of pay at their
26 regular rates of pay for each work day that a recovery period was not provided.

27 99. During the relevant time period, Defendants violated California Labor Code
28 section 226.7 and California Code of Regulations, Title 8, section 3395(d), because

1 Defendants failed to provide Plaintiffs and class members with recovery periods. For
2 example, Plaintiffs were never provided a shaded area for recovery and were not permitted to
3 take recovery periods in a shaded area while working at various worksites. As a further
4 example, Plaintiff N. Gonzalez and his team were disciplined and sent home early when
5 Defendants' management found them seeking shelter from the sun and drinking water under
6 some nearby trees.

7 100. Defendants also have engaged in a company-wide practice and/or policy of not
8 paying all recovery period premiums owed when compliant recovery periods are not provided.
9 As a result, Defendants denied Plaintiffs and class members recovery periods and failed to pay
10 them recovery period premium wages due, in violation of Labor Code section 226.7 and the
11 applicable General Industry Safety Order.

12 101. Defendants' conduct violates the applicable General Industry Safety Order and
13 California Labor Code sections 226.7, 516, and 1198. Plaintiffs and class members are
14 therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's
15 regular rate of compensation for each work day that a compliant recovery period was not
16 provided.

17 **SIXTH CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 19 **Statements and Failure to Maintain Accurate Payroll Records** 20 **(Against all Defendants)**

21 102. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
22 and every allegation set forth above.

23 103. At all relevant times herein set forth, California Labor Code section 226(a)
24 provides that every employer shall furnish each of his or her employees an accurate and
25 complete itemized wage statement in writing, including, but not limited to, the name and
26 address of the legal entity that is the employer, the inclusive dates of the pay period, total
27 hours worked, and all applicable rates of pay.

28 104. At all relevant times, Defendants have knowingly and intentionally provided

1 Plaintiffs and Subclass members with uniform, incomplete, and inaccurate wage statements.
2 For example, Defendants issued uniform wage statements to Plaintiffs and Subclass members
3 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the
4 correct name and address of the legal entity that is the employer; and all applicable hourly
5 rates in effect during the pay period, including overtime rates of pay, and the corresponding
6 number of hours worked at each hourly rate. Specifically, Defendants violated sections
7 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

8 105. Because Defendants did not record the time Plaintiffs and Subclass members
9 spent working off the clock, improperly rounded their clock-in and clock-out duration times,
10 and deducted time worked from their wage statements and employment records for meal
11 periods that were interrupted or missed (and therefore time for which they should have been
12 paid), Defendants did not list the correct amount of gross wages and net wages earned by
13 Plaintiffs and Subclass members in compliance with section 226(a)(1) and 226(a)(5). For the
14 same reason, Defendants failed to accurately list the total number of hours worked by
15 Plaintiffs and Subclass members in violation of section 226(a)(2), and failed to list the
16 applicable hourly rates of pay in effect during the pay period and corresponding accurate
17 number of work hours worked at each hourly rate in violation of section 226(a)(9).

18 106. Separate from these violations, Defendants issued uniform wage statements to
19 Plaintiffs and Subclass members that failed to correctly list the correct name and address of
20 the legal entity of the actual employer in violation of 226(a)(8). The purpose of section
21 226(a)(8) is to provide California employees with transparency as to the true identity of their
22 employer, to allow the employee to contact their employer during employment in the future
23 for various reasons, including, filing an administrative claim, judicial claim, or other action to
24 seek relief against their employer, to obtain unemployment benefits, etc.

25 107. Defendants systematically, and on a company-wide basis, issued wage
26 statements to Plaintiffs and Subclass members that incorrectly list the employing entity's
27 name. Plaintiffs' and Subclass members' wage statements incorrectly list the employer as
28 "SUN PACIFIC FARMING CO.," and according to the California Secretary of State's

1 website, there is no such entity by the name “SUN PACIFIC FARMING CO.” Plaintiffs
2 believe that the correct employing entity that should be listed on employees’ wage statements
3 is “SUN PACIFIC FARMING COOPERATIVE, INC.” Further, Defendants improperly list
4 the entity address as “EXETER, CA” instead of a full address.

5 108. The wage statement deficiencies also include, without limitation, failing to list
6 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
7 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
8 only the last four digits of his or her social security number or an employee identification
9 number other than a social security number; failing to list the inclusive dates of the period for
10 which class members were paid; and/or failing to state all hours worked as a result of not
11 recording or stating hours worked off-the-clock.

12 109. California Labor Code section 1198 provides that the maximum hours of work
13 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
14 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
15 employment of any employees for longer hours than those fixed by the order or under
16 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
17 Wage Order, employers are required to keep accurate time records showing when the
18 employee begins and ends each work period and meal period. During the relevant time
19 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
20 and meal period start and stop times for Plaintiffs and Subclass members, in violation of
21 section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of
22 falsifying Plaintiffs’ and Subclass members’ time records by recording that compliant meal
23 periods were taken regardless of if or when meal periods were actually taken, and thereby
24 failed to keep accurate records of meal start and end times for Plaintiffs and Subclass
25 members. Also, in light of Defendants’ failure to provide Plaintiffs and Subclass members
26 with second 30-minute meal periods to which they were entitled, Defendants kept no records
27 of meal start and end times for second meal periods.

28 110. California Labor Code section 1174(d) provides that “[e]very person employing

labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiffs and Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Plaintiff’s and Subclass members’ clock-in and clock-out duration times.

111. Plaintiffs and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid

Upon Termination

(Against all Defendants)

112. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

113. This cause of action is dependent upon, and wholly derivative of, the overtime wages; minimum wages; meal, rest, and recovery period premium wages; and reporting time pay, that were not timely paid to Plaintiffs and those class members no longer employed by Defendants upon their termination.

114. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two

(72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

115. Defendants willfully failed to pay Plaintiffs and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premium wages; and reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

116. Defendants' failure to pay Plaintiffs and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment (Against all Defendants)

117. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

118. This cause of action is dependent upon, and wholly derivative of, the overtime wages; minimum wages; meal, rest, and recovery period premium wages; and reporting time pay, that were not timely paid to Plaintiffs and class members during their employment.

119. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

1 120. At all times relevant herein, Labor Code section 204 provides that all wages
2 earned by any person in any employment between the sixteenth (16th) and the last day,
3 inclusive, of any calendar month, other than those wages due upon termination of an
4 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
5 month.

6 121. At all times relevant herein, Labor Code section 204 provides that all wages
7 earned for labor in excess of the normal work period shall be paid no later than the payday for
8 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
9 204 provides that the requirements of this section are deemed satisfied by the payment of
10 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
11 seven (7) calendar days following the close of the payroll period.

12 122. During the relevant time period, Defendants willfully failed to pay Plaintiffs
13 and class members all wages due including, but not limited to, overtime wages; minimum
14 wages; meal, rest, and recovery period premium wages; and reporting time pay, within the
15 time periods specified by California Labor Code section 204.

16 123. Defendants' failure to pay Plaintiffs and class members all wages due violates
17 Labor Code section 204. Plaintiffs and class members are therefore entitled to recover from
18 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

19 **NINTH CAUSE OF ACTION**

20 **Violation of California Labor Code § 1198 and California Code of Regulations Title 8,** 21 **Section 11140 Subdivision 5(A)—Failure to Provide Reporting Time Pay** 22 **(Against all Defendants)**

23 124. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
24 and every allegation set forth above.

25 125. California Labor Code section 1198 makes it illegal to employ an employee
26 under conditions of labor that are prohibited by the applicable wage order. California Labor
27 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
28 shall be the . . . standard conditions of labor for employees. The employment of any employee

1 . . . under conditions of labor prohibited by the order is unlawful.”

2 126. The applicable wage order, California Code of Regulations, Title 8, section
3 11140(5)(A) provides that “[e]ach workday an employee is required to report for work and
4 does report, but is not put to work or is furnished less than half said employee’s usual or
5 scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work,
6 but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s
7 regular rate of pay, which shall not be less than the minimum wage.”

8 127. Defendants violated California Labor Code section 1198 and California Code
9 of Regulations, Title 8, section 11140(5) because Defendants failed to pay Plaintiffs and class
10 members reporting time pay when they reported for work for their scheduled shift but were
11 put to work for less than half of the regular schedule. Defendants had a company-wide
12 practice of sending employees home early from their shifts, including before they had worked
13 at least half of their regular shift.

14 128. First, Defendants failed to pay Plaintiffs and class members reporting time pay
15 when they presented themselves ready for work by waiting at home during a scheduled “on-
16 call” overnight shifts during the winter and awaiting instructions on whether to they needed to
17 show up to protect produce from freezing, but ultimately were not called. Defendants did not
18 pay Plaintiffs and class members for at least half of their scheduled day’s work when they
19 were subject to Defendants’ on-call policy and were not called or told not to come into work.
20 For example, Plaintiffs waited at their homes during their scheduled “on-call” shifts as
21 required by Defendants’ on-call policy, but were sometimes not called or told that Defendants
22 did not need them to work. When this occurred, Defendants did not pay them for at least half
23 of their scheduled standby time or the required minimum reporting time pay.

24 129. Second, Plaintiffs and class members would report to work based on the
25 schedule Defendants provided to them, but Defendants’ management would send them home
26 either immediately, or within the first couple hours of work on an extremely hot day or rainy
27 day. As another example, on one occasion, Plaintiff N. Gonzalez reported to work and was
28 sent home by Defendants after completing one (1) hour of work cleaning his work area.

1 Although Plaintiffs and class members would report to work based on the schedule
2 Defendants provided to them, Defendants would send them home before they had worked at
3 least half of their scheduled shifts without giving them reporting time pay.

4 130. Accordingly, Plaintiffs and class members were not properly compensated with
5 reporting time pay in violation of California Labor Code section 1198.

6 **TENTH CAUSE OF ACTION**

7 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

8 **(Against all Defendants)**

9 131. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
10 and every allegation set forth above.

11 132. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover
12 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
13 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
14 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c)
15 permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of
16 those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

17 133. Defendants’ conduct, as alleged herein, violates numerous sections of the
18 California Labor Code, including, but not limited to, the following:

- 19 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
20 wage order for Defendants’ failure to compensate Plaintiffs and other
21 aggrieved employees with all required overtime pay, as set forth below;
- 22 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
23 and the applicable IWC wage order for Defendants’ failure to
24 compensate Plaintiffs and other aggrieved employees with at least
25 minimum wages for all hours worked, as alleged herein;
- 26 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
27 applicable IWC wage order for Defendants’ failure to provide Plaintiffs
28 and other aggrieved employees with meal periods, as alleged herein;

- (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants' failure to authorize and permit Plaintiffs and other aggrieved employees to take rest periods, as alleged herein;
- (e) Violation of Labor Code sections 226.7, 516, 1198, and the applicable General Industry Safety Order for Defendants' failure to provide Plaintiffs and other aggrieved employees with recovery periods, as alleged herein;
- (f) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiffs and other aggrieved employees, as alleged herein;
- (g) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as alleged herein;
- (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination, as alleged herein;
- (i) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (j) Violation of Labor Code section 1198 and the applicable IWC wage order for failure to pay reporting time pay when Plaintiffs and other aggrieved employees were put to work for less than half of their regular scheduled shifts, as alleged herein; and
- (k) Violation of Labor Code section 1198 and the applicable IWC wage order for failure to pay split shift premiums when Plaintiffs and other aggrieved employees returned to work for an additional shift in the same day, after having been clocked out for more than an hour, as set forth below.

134. California Labor Code section 1198 provides that no employer may employ an

1 employee under conditions of labor that are prohibited by the applicable IWC wage order.
2 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
3 fixed by the commission shall be the . . . standard conditions of labor for employees. The
4 employment of any employee . . . under conditions of labor prohibited by the order is
5 unlawful.”

6 135. California Code of Regulations, Title 8, section 11140(4)(C) provides that
7 “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid
8 in addition to the minimum wage for that workday, except when the employee resides at the
9 place of employment.” Plaintiffs and other aggrieved employees did not reside at Defendants’
10 locations. California Code of Regulations, Title 8, defines a split shift as “a work schedule,
11 which is interrupted by non-paid non-working periods established by the employer, other than
12 bona fide rest or meal periods.”

13 136. Defendants violated California Labor Code section 1198 and California Code
14 of Regulations, Title 8, section 11140(4)(C), because Defendants failed to pay Plaintiffs and
15 other aggrieved employees a split-shift premium when they returned to work for an additional
16 shift in the same day, after having been clocked out for more than an hour. For instance,
17 Plaintiffs were required to work for several hours on overnight shifts to protect produce from
18 freezing, and then required to return several hours later for their scheduled morning shifts.
19 When this occurred, Defendants did not always pay Plaintiffs and other aggrieved employees
20 an additional hour at minimum wage. Accordingly, Defendants required Plaintiffs and other
21 aggrieved employees to work split shifts but failed to pay them an additional hour at minimum
22 wage in violation of California Labor Code section 1198.

23 137. Defendants’ failure to compensate Plaintiffs and other aggrieved employees
24 with split-shift pay when they returned to work for an additional shift in the same day, after
25 having been clocked out for more than an hour, violates California Labor Code section 1198.
26 Plaintiffs and other aggrieved employees are therefore entitled to recover civil penalties
27 pursuant to Labor Code sections 2699(a), (f), and (g).

28 //

1 **ELEVENTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

5 138. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
6 and every allegation set forth above.

7 139. Defendants are “persons” as defined by California Business & Professions
8 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 140. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have
12 suffered injury in fact and have lost money as a result of Defendants’ unlawful business
13 practices. Plaintiffs seek to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

15 141. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business &
17 Professions Code sections 17200, *et seq.*

18 142. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Requiring non-exempt, hourly paid employees, including Plaintiffs and
22 class members, to work overtime without paying them proper
23 compensation in violation of California Labor Code sections 510 and
24 1198 and the applicable IWC Order, as alleged herein;
- 25 (b) Failing to pay at least minimum wage to Plaintiffs and class members in
26 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
27 and 1198 and the applicable IWC Order, as alleged herein;
- 28 (c) Failing to provide uninterrupted meal periods to Plaintiffs and class

members in violation of California Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Order, as alleged herein;

- (d) Failing to authorize and permit Plaintiffs and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- (e) Failing to provide recovery periods to Plaintiffs and class members in violation of Labor Code sections 226.7, 516, 1198, and the applicable General Industry Safety Order, as alleged herein;
- (f) Failing to provide Plaintiffs and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), 1198, and the applicable IWC Order, as alleged herein;
- (g) Failing timely to pay all earned wages to Plaintiffs and class members in violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein;
- (h) Failing to pay reporting time pay when Plaintiffs and class members were put to work for less than half of their regular scheduled shifts, as alleged herein; and
- (i) Failing to pay Plaintiffs and class members a split-shift premium wage of an additional hour of pay at the minimum wage, when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, in violation of California Labor Code section 1198 and the application IWC Order, as set forth below.

143. At all times relevant herein, Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Code of Regulations, Title 8, section 11140(4)(C) provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the

1 employee resides at the place of employment.” Plaintiffs and class members did not reside at
2 Defendants’ locations. California Code of Regulations, Title 8, defines a split shift as “a work
3 schedule, which is interrupted by non-paid non-working periods established by the employer,
4 other than bona fide rest or meal periods.”

5 144. Defendants violated California Labor Code section 1198 and California Code
6 of Regulations, Title 8, section 11140(4)(C), because Defendants failed to pay Plaintiffs and
7 class members a split-shift premium when they returned to work for an additional shift in the
8 same day, after having been clocked out for more than an hour. For instance, Plaintiffs were
9 required to work for several hours on overnight shifts to protect produce from freezing, and
10 then required to return several hours later for their scheduled morning shifts. When this
11 occurred, Defendants did not always pay Plaintiffs and class members an additional hour at
12 minimum wage.

13 145. Accordingly, Defendants required Plaintiffs and class members to work split
14 shifts but have failed to pay them the split-shift premium wage in violation of California
15 Labor Code section 1198. Defendants’ failure to compensate Plaintiffs and class members
16 with split-shift pay when they returned to work for an additional shift in the same day, after
17 having been clocked out for more than an hour, violates California Labor Code section 1198.

18 146. As a result of the violations of California law herein described, Defendants
19 unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members
20 have suffered pecuniary loss by Defendants’ unlawful business acts and practices alleged
21 herein.

22 147. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
23 Plaintiffs and class members are entitled to restitution of the wages withheld and retained by
24 Defendants during a period that commences four years prior to the filing of this complaint; a
25 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and
26 class members; and an award of attorneys’ fees pursuant to California Code of Civil
27 Procedure section 1021.5 and other applicable laws; and an award of costs.

28 //

1 **ELEVENTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, et seq. –**

3 **Unfair Business Practices**

4 **(Against all Defendants)**

5 148. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
6 and every allegation set forth above.

7 149. Defendants are “persons” as defined by California Business & Professions
8 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 150. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 and harmful to Plaintiff, class members, and to the general public. Plaintiffs have suffered
12 injury in fact and have lost money as a result of Defendants’ unfair business practices.
13 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of
14 Code of Civil Procedure section 1021.5.

15 151. Defendants’ activities, namely Defendants’ company-wide practice and/or
16 policy of not paying Plaintiffs and class members all meal and rest period premium wages due
17 to them under Labor Code section 226.7, deprived Plaintiffs and class members of the
18 compensation guarantee and enhanced enforcement implemented by section 226.7. The
19 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
20 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
21 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
22 guaranteed to Plaintiffs and class members as part of their employment with Defendants, and
23 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
24 unfair business practice in violation of California Business & Professions Code sections
25 17200, *et seq.* (Id.)

26 152. A violation of California Business & Professions Code sections 17200, *et seq.*
27 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
28 and practices have violated the spirit of California’s meal and rest break laws and constitute

1 acts against the public policy behind these laws.

2 153. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
3 Plaintiffs and class members are entitled to restitution for the class-wide loss of the statutory
4 benefits implemented by section 226.7 withheld and retained by Defendants during a period
5 that commences four years prior to the filing of this complaint; a permanent injunction
6 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
7 Plaintiffs and class members; an award of attorneys' fees pursuant to California Code of Civil
8 Procedure section 1021.5 and other applicable laws; and an award of costs.

9 **REQUEST FOR JURY TRIAL**

10 Plaintiffs request a trial by jury.

11 **PRAYER FOR RELIEF**

12 Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment
13 against Defendants, jointly and severally, as follows:

14 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
15 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiffs
16 reserve the right to amend their prayer for relief to seek a different amount.

17 **Class Certification**

- 18 2. That this case be certified as a class action;
19 3. That Plaintiffs be appointed as the representatives of the Class and Subclass;
20 4. That counsel for Plaintiffs be appointed as class counsel.

21 **As to the First Cause of Action**

22 5. That the Court declare, adjudge, and decree that Defendants violated California
23 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
24 pay all overtime wages due to Plaintiffs and class members;

25 6. For general unpaid wages at overtime wage rates and such general and special
26 damages as may be appropriate;

27 7. For pre-judgment interest on any unpaid overtime compensation commencing
28 from the date such amounts were due, or as otherwise provided by law;

1 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
2 California Labor Code section 1194(a); and

3 9. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Second Cause of Action**

6 10. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
8 minimum wages to Plaintiffs and class members;

9 11. For general unpaid wages and such general and special damages as may be
10 appropriate;

11 12. For pre-judgment interest on any unpaid compensation from the date such
12 amounts were due, or as otherwise provided by law;

13 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
14 California Labor Code section 1194(a);

15 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

16 15. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Third Cause of Action**

19 16. That the Court declare, adjudge, and decree that Defendants violated California
20 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
21 willfully failing to provide all meal periods to Plaintiffs and class members;

22 17. That the Court make an award to the Plaintiffs and class members of one (1)
23 hour of pay at each employee's regular rate of pay for each workday that a meal period was
24 not provided;

25 18. For all actual, consequential, and incidental losses and damages, according to
26 proof;

27 19. For premiums pursuant to California Labor Code section 226.7(b);

28 20. For pre-judgment interest on any unpaid meal period premiums from the date

1 such amounts were due, or as otherwise provided by law;

2 21. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 22. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Fourth Cause of Action**

7 23. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully
9 failing to authorize and permit Plaintiffs and class members to take all rest periods;

10 24. That the Court make an award to the Plaintiffs and class members of one (1)
11 hour of pay at each employee's regular rate of pay for each workday that a rest period was not
12 authorized and permitted;

13 25. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 26. For premiums pursuant to California Labor Code section 226.7(b);

16 27. For pre-judgment interest on any unpaid rest period premiums from the date
17 such amounts were due, or as otherwise provided by law;

18 28. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and

20 29. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Fifth Cause of Action**

23 30. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code sections 226.7, 516, and 1198 and California Code of Regulations, Title 8, section
25 3395 by willfully failing to provide all recovery periods to Plaintiffs and class members;

26 31. That the Court make an award to the Plaintiffs and class members of one (1)
27 hour of pay at each employee's regular rate of pay for each workday that a recovery period
28 was not provided;

1 32. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 33. For premiums pursuant to California Labor Code section 226.7(c);

4 34. For pre-judgment interest on any unpaid recovery period premiums from the
5 date such amounts were due, or as otherwise provided by law;

6 35. For attorneys' fees pursuant to California Code of Civil Procedure section
7 1021.5, or as otherwise provided by law; and

8 36. For such other and further relief as the Court may deem equitable and
9 appropriate

10 **As to the Sixth Cause of Action**

11 37. That the Court declare, adjudge and decree that Defendants violated the
12 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
13 Orders as to Plaintiffs and Subclass members, and willfully failed to provide accurate itemized
14 wage statements thereto;

15 38. For all actual, consequential, and incidental losses and damages, according to
16 proof;

17 39. For injunctive relief pursuant to California Labor Code section 226(h);

18 40. For statutory penalties pursuant to California Labor Code section 226(e);

19 41. For attorneys' fees and costs pursuant to California Labor Code section
20 226(e)(1); and

21 42. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 **As to the Seventh Cause of Action**

24 43. That the Court declare, adjudge and decree that Defendants violated California
25 Labor Code sections 201 and 202 by willfully failing to pay overtime wages; minimum wages;
26 meal, rest, and recovery period premiums; and reporting time pay owed at the time of
27 termination of the employment of Plaintiffs and other terminated class members;

28 44. For all actual, consequential and incidental losses and damages, according to

1 proof;

2 45. For waiting time penalties according to proof pursuant to California Labor
3 Code section 203 for all employees who have left Defendants' employ;

4 46. For pre-judgment interest on any unpaid wages from the date such amounts
5 were due, or as otherwise provided by law;

6 47. For attorneys' fees pursuant to California Code of Civil Procedure section
7 1021.5, or as otherwise provided by law; and

8 48. For such other and further relief as the Court may deem equitable and
9 appropriate.

10 **As to the Eighth Cause of Action**

11 49. That the Court declare, adjudge and decree that Defendants violated California
12 Labor Code section 204 by willfully failing to timely pay Plaintiffs and class members
13 overtime wages; minimum wages; meal, rest, and recovery period premiums; and reporting
14 time pay during their employment;

15 50. For all actual, consequential and incidental losses and damages, according to
16 proof;

17 51. For statutory penalties according to proof pursuant to California Labor Code
18 section 210;

19 52. For pre-judgment interest on any unpaid wages from the date such amounts
20 were due, or as otherwise provided by law;

21 53. For attorneys' fees pursuant to California Code of Civil Procedure section
22 1021.5, or as otherwise provided by law; and

23 54. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Ninth Cause of Action**

26 55. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code section 1198 and California Code of Regulations, Title 8, section 11140(5)(A) by
28 failing to provide Plaintiffs and class members with reporting time pay;

1 56. For all actual, consequential and incidental losses and damages, according to
2 proof;

3 57. For pre-judgment interest on any unpaid wages from the date such amounts
4 were due, or as otherwise provided by law; and

5 58. For such other and further relief as the Court may deem equitable and
6 appropriate.

7 **As to the Tenth Cause of Action**

8 59. That the Court declare, adjudge and decree that Defendants violated the
9 following California Labor Code provisions as to Plaintiffs and/or other aggrieved employees:
10 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
11 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
12 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
13 permit all rest periods); 226.7, 516, and 1198 (by failing to provide all recovery periods);
14 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain
15 accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon
16 termination); 204 (by failing timely to pay all earned wages during employment); 1198 (by
17 failing to provide reporting time pay); and 1198 (by failing to provide split-shift pay);

18 60. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
19 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
20 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
21 1197.1, and 1198;

22 61. For attorneys' fees and costs pursuant to California Labor Code section
23 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
24 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
25 1194, 1197, 1197.1, and 1198;

26 62. For pre-judgment and post-judgment interest as provided by law; and

27 63. For such other and further relief as the Court may deem equitable and
28 appropriate.

As to the Eleventh Cause of Action

64. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiffs and class members all overtime wages due to them, failing to provide Plaintiffs and class members all minimum wages due to them, failing to provide Plaintiffs and class members all meal periods, failing to authorize and permit Plaintiffs and class members to take all rest periods, failing to provide Plaintiffs and class members all recovery periods, failing to provide Plaintiffs and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiffs and class members, failing timely to pay Plaintiffs and class members all earned wages during employment, failing to pay reporting time pay, and failing to properly compensate Plaintiffs and class members for split shifts, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

65. For restitution of unpaid wages to Plaintiffs and all class members and prejudgment interest from the day such amounts were due and payable;

66. 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.*;

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

68. For such other and further relief as the Court may deem equitable and appropriate.

As to the Twelfth Cause of Action

69. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

70. For restitution of the statutory benefits under section 226.7 unfairly withheld

1 from Plaintiffs and class members and prejudgment interest from the day such amounts were
2 due and payable;

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

7 72. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
8 California Code of Civil Procedure section 1021.5;

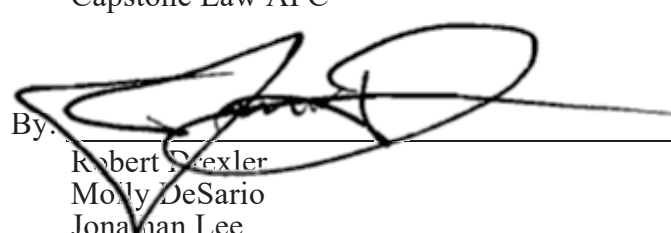
9 73. For pre-judgment and post-judgment interest as provided by law; and

10 74. For such other and further relief as the Court may deem equitable and
11 appropriate.

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13 Dated: August 31, 2020

Respectfully submitted,

Capstone Law APC

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16 By. 

Robert Drexler
Molly DeSario
Jonah Lee

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18
19 Attorneys for Plaintiffs Guillermo Gonzalez
and Nicolas Gonzalez

Exhibit 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

May 29, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Guillermo Gonzalez v. Sun Pacific Farming Cooperative, Inc., et al.*

Dear PAGA Administrator:

This office represents Guillermo Gonzalez in connection with his claims under the California Labor Code. Mr. Gonzalez was an employee of SUN PACIFIC FARMING COOPERATIVE, INC.; SUN PACIFIC SHIPPERS, L.P.; and/or SUN PACIFIC MARKETING COOPERATIVE, INC. For the purpose of this letter, Mr. Gonzalez collectively refers to these entities as “SUN PACIFIC.”

The employers may be contacted directly at the addresses below:

SUN PACIFIC FARMING COOPERATIVE, INC.
1300 EAST MYER AVE.
EXETER CA 93221

SUN PACIFIC SHIPPERS, L.P.
33374 LERDO HWY
BAKERSFIELD CA 93308

SUN PACIFIC FARMING COOPERATIVE, INC.
P.O. BOX 217
EXETER CA 93221

SUN PACIFIC MARKETING
COOPERATIVE, INC.
1095 E GREEN STREET
PASADENA CA 91106

Mr. Gonzalez intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Gonzalez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SUN PACIFIC as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

SUN PACIFIC employed Mr. Gonzalez as an hourly paid, non-exempt employee from approximately March 2000 to January 2020. Mr. Gonzalez worked for SUN PACIFIC as a Spray Operator at its location in Lindsay, California. During his employment, Mr. Gonzalez typically worked eight (8) to twelve (12) hours or more per day and five (5) days per week. At the time Mr.

Gonzalez's employment with SUN PACIFIC ended, he earned approximately \$14.00 per hour. His job duties included, without limitation, operating agricultural machinery; mixing, loading, and applying pesticides onto fields; and maintaining equipment and work areas.

SUN PACIFIC committed one or more of the following Labor Code violations against Mr. Gonzalez, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

SUN PACIFIC's Company-Wide and Uniform Payroll and HR Practices

SUN PACIFIC FARMING COOPERATIVE, INC. and SUN PACIFIC MARKETING COOPERATIVE, INC. are California corporations; and SUN PACIFIC SHIPPERS, L.P. is a California limited partnership. Together, they are one of the largest produce growers in California that owns and manages over 30,000 acres of agricultural land. Upon information and belief, SUN PACIFIC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Exeter, California, for all non-exempt, hourly paid employees working for SUN PACIFIC in California, including Mr. Gonzalez and other aggrieved employees. At all relevant times, SUN PACIFIC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Gonzalez and other aggrieved employees, regardless of its location or position.

Upon information and belief, SUN PACIFIC maintains a centralized Payroll department at its corporate headquarters in Exeter, California, which processes payroll for all non-exempt, hourly paid employees working for SUN PACIFIC in California, including Mr. Gonzalez and other aggrieved employees. Further, SUN PACIFIC issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Gonzalez and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, SUN PACIFIC utilized the same methods and formulas when calculating wages due to Mr. Gonzalez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than ten (10) hours in a day or more than sixty (60) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of ten (10) hours in a day or more than sixty (60) hours in a workweek. The applicable IWC Wage Order further provides that, starting January 1, 2019, employers are required to pay employees working more than nine and one-half (9½) hours in a day or more than fifty-five (55) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of nine and one-half (9½) hours in a day or more than fifty-five (55) hours in a workweek; and starting January 1, 2020, employers are required to pay employees working more

¹ These facts, theories, and claims are based on Mr. Gonzalez's experience and counsel's review of those records currently available relating to Mr. Gonzalez's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Gonzalez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

than nine (9) hours in a day or more than fifty (50) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of nine (9) hours in a day or more than fifty (50) hours in a workweek. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including shift differential pay, nondiscretionary bonuses and incentive pay.

SUN PACIFIC willfully failed to pay all overtime wages owed to Mr. Gonzalez and other aggrieved employees. During the relevant time period, Mr. Gonzalez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of the applicable maximum hours in a day and/or in excess of the applicable maximum hours in a week, because all hours worked were not recorded.

First, during the relevant time period, SUN PACIFIC had a company-wide "on-call" policy, whereby it scheduled Mr. Gonzalez and other aggrieved employees to work "on-call" overnight shifts during the winter. During an "on-call" shift, Mr. Gonzalez and other aggrieved employees had to be available and report to work upon receiving a call from SUN PACIFIC notifying them that they were needed to protect produce from freezing. When scheduled to be "on-call," Mr. Gonzalez and other aggrieved employees were in essence on controlled standby for SUN PACIFIC because they could not use that time freely for their own purposes and were forced to put their lives on hold. For example, when assigned to "on-call" duty, Mr. Gonzalez refrained from making plans because he knew that they had to drop whatever he was doing at a moment's notice if he received a call from SUN PACIFIC to report to work. However, SUN PACIFIC failed to pay Mr. Gonzalez and other aggrieved employees for the time during which they were waiting to receive a call from SUN PACIFIC and unable to use their time for their own purposes.

Second, during the relevant period, SUN PACIFIC had a company-wide policy and/or practice of improperly rounding employee clock-in and clock-out duration times to the nearest quarter-hour or nearest half-hour in their timekeeping system. SUN PACIFIC's rounding policy resulted in the failure to compensate Mr. Gonzalez and other aggrieved employees fully for all hours worked, causing Mr. Gonzalez and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. Upon information and belief, SUN PACIFIC's rounding policy has, and continues to be, unfair and has, over time, resulted in the underpayment of wages to Mr. Gonzalez and other aggrieved employees. To the extent SUN PACIFIC's rounding policy took away time worked that was eligible for overtime, Mr. Gonzalez and other aggrieved employees were denied overtime pay for all hours worked. Alternatively, SUN PACIFIC had, and continues to have, a company-wide policy and/or practice of failing to record hours worked by its employees. Instead, on information and belief, SUN PACIFIC's policy and/or practice is to simply pay employees, including Mr. Gonzalez and other aggrieved employees, for the hours they are scheduled to work. Because SUN PACIFIC failed to accurately record their actual hours worked, Mr. Gonzalez and other aggrieved employees were not paid for all hours worked before or after their scheduled shifts.

Third, SUN PACIFIC, on a company-wide basis, had a practice of failing to schedule meal periods and/or failing to adhere to a schedule of meal periods, which caused Mr. Gonzalez and other aggrieved employees to not be relieved of their duties for compliant meal periods. Additionally, SUN PACIFIC had no policy for providing Mr. Gonzalez and other aggrieved employees with meal periods on days that they worked overnight shifts. As a result of these policies and/or practices, Mr. Gonzalez and other aggrieved employees were required to work through meal periods, in order to complete their assigned tasks. Thus, Mr. Gonzalez and other aggrieved employees performed work during meal periods for which they were not paid.

Fourth, on information and belief, because SUN PACIFIC frowned upon employees accruing meal period penalties, when Mr. Gonzalez and other aggrieved employees failed to clock themselves out at their designated meal period start times, they were subject to SUN PACIFIC altering their time records and deducting time for meal periods that were not taken. Alternatively, SUN PACIFIC's management falsified employee time records by clocking out Mr. Gonzalez and other aggrieved employees at designated start and end times to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that SUN PACIFIC would otherwise owe. Consequently, Mr. Gonzalez and other aggrieved employees performed work during meal periods for which they were not paid.

SUN PACIFIC knew or should have known that as a result of these company-wide practices and/or policies, Mr. Gonzalez and other aggrieved employees were performing assigned duties off-the-clock and during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Gonzalez and other aggrieved employees worked shifts of ten (10) hours a day or more or sixty (60) hours a week or more; shifts of nine and one-half (9 ½) hours a day or more or fifty-five (55) hours a week or more; and/or shifts of nine (9) hours a day or more or fifty (50) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Gonzalez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, SUN PACIFIC did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, SUN PACIFIC paid other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SUN PACIFIC failed to incorporate all compensation, including but not limited to, shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, SUN PACIFIC failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Gonzalez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 14 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11140(2)(G) (defining "Hours Worked").

As stated, SUN PACIFIC systematically, and on a company-wide basis, required Mr. Gonzalez and other aggrieved employees to work "on-call" shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Gonzalez and other aggrieved employees were subject to SUN PACIFIC's control during an "on-call" shift, SUN PACIFIC did not pay Mr. Gonzalez and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work. As also described above, SUN PACIFIC had

a policy of rounding Mr. Gonzalez's and other aggrieved employees' hourly clock-in and clock-out duration times to the quarter-hour or half-hour in their timekeeping system, resulting in the failure to compensate Mr. Gonzalez and other aggrieved employees fully for all hours worked. Alternatively, SUN PACIFIC had a company-wide policy and/or practice of only paying Mr. Gonzalez and other aggrieved employees for their scheduled shifts, rather than their actual hours worked, because SUN PACIFIC failed to track hours worked outside scheduled shifts.

Furthermore, as stated above, due to SUN PACIFIC's failure to schedule meal periods and/or failure to adhere to a schedule of meal periods, Mr. Gonzalez and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Also, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, SUN PACIFIC's management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

Thus, SUN PACIFIC did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, SUN PACIFIC did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, SUN PACIFIC regularly failed to pay at least minimum wages to Mr. Gonzalez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Gonzalez and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest period and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, SUN PACIFIC had a practice of failing to schedule meal periods and/or failing to adhere to a schedule of meal periods, which caused Mr. Gonzalez and other aggrieved employees to not be relieved of their duties for compliant meal periods. SUN PACIFIC also required Mr.

Gonzalez and other aggrieved employees to finish tasks within a tight deadline, such as spraying assigned areas, before they were permitted to take meal periods. As a result, Mr. Gonzalez and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period. For example, during his employment, Mr. Gonzalez would start his meal periods late in order to complete his assigned tasks in compliance with SUN PACIFIC's deadlines. As a further example, some properties that Mr. Gonzalez and other aggrieved employees worked on drew their water from a well. Because the water was turned off at a certain time on these properties, Mr. Gonzalez and other aggrieved employees were told to take their meal periods only after they completed their assignments before the scheduled water shutoff time, and, as a result, took their meal periods after they worked in excess of five (5) hours.

Second, SUN PACIFIC had no policy for providing Mr. Gonzalez and other aggrieved employees with first or second meal periods when they worked overnight shifts. During the summer, SUN PACIFIC scheduled Mr. Gonzalez and other aggrieved employees to work 12-hour shifts but did not provide them with any meal periods at all. As a result of these policies and/or practices, Mr. Gonzalez and other aggrieved employees were not provided with uninterrupted 30-minute meal periods during shifts in which they were entitled to receive first and second meal periods. Mr. Gonzalez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Third, because SUN PACIFIC frowned upon employees accruing meal period penalties, upon information and belief, SUN PACIFIC's management would adjust employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by SUN PACIFIC.

SUN PACIFIC knew or should have known that as a result of policies, Mr. Gonzalez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SUN PACIFIC further knew or should have known that it did not pay Mr. Gonzalez and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, SUN PACIFIC engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Gonzalez and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that SUN PACIFIC did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, SUN PACIFIC did not pay other aggrieved employees at the correct rate of pay for premium wages because SUN PACIFIC systematically failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SUN PACIFIC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Gonzalez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, SUN PACIFIC regularly failed to authorize and permit Mr. Gonzalez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SUN PACIFIC’s company-wide practices, including failing to schedule rest periods, which, coupled with SUN PACIFIC’s assignment of tight deadlines, led to Mr. Gonzalez and other aggrieved employees not being authorized and permitted to take compliant rest periods. SUN PACIFIC’s management also threatened to discipline Mr. Gonzalez and other aggrieved employees whenever they were observed to not be actively working, which further prevented Mr. Gonzalez and other aggrieved employees from being relieved of all duty to take compliant rest periods.

Furthermore, during the relevant time period, SUN PACIFIC maintained a company-wide on-premises rest period policy, which mandated that Mr. Gonzalez and other aggrieved employees remain on SUN PACIFIC’s worksites during their rest periods. Because Mr. Gonzalez and other aggrieved employees were restricted from leaving the worksites during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, SUN PACIFIC effectively maintained control over Mr. Gonzalez and other aggrieved employees during rest periods.

As a result of SUN PACIFIC’s practices and policies, Mr. Gonzalez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during his employment, Mr. Gonzalez missed his rest periods due to SUN PACIFIC’s failure to schedule rest periods.

SUN PACIFIC also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that SUN PACIFIC did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SUN PACIFIC did not pay other aggrieved employees at the correct rate of pay for premium wages because SUN PACIFIC failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SUN PACIFIC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Gonzalez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7 and 1198 & California Code of Regulations Title 8, Section 3395 – Failure to Provide Heat Recovery Periods

California Labor Code section 226.7(a) defines “recovery period” to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that “[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling.” Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore, “[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other.” *Id.* “Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.” *Id.*

During the relevant time period, SUN PACIFIC violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because SUN PACIFIC failed to provide Mr. Gonzalez and other aggrieved employees with recovery periods. For example, Mr. Gonzalez was never provided a shaded area for recovery and was not permitted to take recovery periods in a shaded area while working at various worksites. As a further example, other aggrieved employees were disciplined and sent home early when SUN PACIFIC's management found them seeking shelter from the sun and drinking water under some nearby trees.

SUN PACIFIC also has engaged in a company-wide practice and/or policy of not paying all recovery period premiums owed when compliant recovery periods are not provided. Alternatively, to the extent that SUN PACIFIC did pay recovery period premium wages to other aggrieved employees, it did so at the incorrect rates. Because SUN PACIFIC did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums paid for recovery period violations were also paid at an incorrect rate and resulted in an underpayment of recovery period premium wages.

Accordingly, SUN PACIFIC failed to authorize and permit all recovery periods in violation of California Labor Code sections 226.7 and 1198. Mr. Gonzalez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. SUN PACIFIC has not provided Mr. Gonzalez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, SUN PACIFIC has knowingly and intentionally provided Mr. Gonzalez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SUN PACIFIC issued uniform wage statements to Mr. Gonzalez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name and address of the employing entity; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, SUN PACIFIC violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because SUN PACIFIC did not record the time Mr. Gonzalez and other aggrieved employees spent working off-the-clock, improperly rounded their clock-in and clock-out duration times, and deducted time worked from their wage statements and employment records for meal periods that were interrupted or missed (and therefore time for which they should have been paid), SUN PACIFIC did not list the correct amount of gross wages and net wages earned by Mr. Gonzalez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SUN PACIFIC failed to accurately list the total number of hours worked by Mr. Gonzalez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because SUN PACIFIC did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, SUN PACIFIC did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, SUN PACIFIC also failed to list the correct amount of net wages in violation of section 226(a)(5). SUN PACIFIC also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, SUN PACIFIC issued uniform wage statements to Mr. Gonzalez and other aggrieved employees that failed to correctly list the correct name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including, filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc.

SUN PACIFIC systematically, and on a company-wide basis, issued wage statements to Mr. Gonzalez and other aggrieved employees that incorrectly list the employing entity's name. Mr. Gonzalez's and other aggrieved employees' wage statements incorrectly list the employer as "SUN PACIFIC FARMING CO.," and according to the California Secretary of State's website, there is no such entity by the name "SUN PACIFIC FARMING CO." Mr. Gonzalez believes that the correct employing entity that should be listed on employees' wage statements is "SUN PACIFIC FARMING COOPERATIVE, INC." Further, SUN PACIFIC improperly lists the entity address as "EXETER, CA" instead of a full address. *See example wage statement below.*

SUN PACIFIC FARMING CO. • EXETER, CA • FED. I.D. NO. 94-2199616		CHECK DATE 2/14/20 CHECK NO. 64532	
EMP. NO.	NAME	SOC. SECURITY NO.	DATE
	GUILLERMO GONZALEZ VACA		2/14/20
		36	M
		2/03/20	2/09/20

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SUN PACIFIC willfully failed to maintain accurate payroll records for Mr. Gonzalez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Gonzalez's and other aggrieved employees' total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SUN PACIFIC failed, on a company-wide basis, to keep accurate records of work period and/or meal period start and stop times for Mr. Gonzalez and other aggrieved employees, in violation of section 1198. As stated, SUN PACIFIC engaged in company-wide practices and/or policies of failing to record actual hours worked and falsifying Mr. Gonzalez's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of shift and meal start and end times for Mr. Gonzalez and other aggrieved employees. Furthermore, in light of SUN PACIFIC's failure to provide Mr. Gonzalez and other aggrieved employees with second 30-minute meal periods to which they were entitled, SUN PACIFIC kept no records of meal start and end times for second meal periods.

Because SUN PACIFIC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Gonzalez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Gonzalez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Gonzalez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, SUN PACIFIC failed to pay Mr. Gonzalez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premium wages; and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Gonzalez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

SUN PACIFIC willfully failed to pay Mr. Gonzalez and other aggrieved employees who are no longer employed by SUN PACIFIC all their earned wages, including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premium wages; and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving SUN PACIFIC's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Gonzalez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11140 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11140(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

During the relevant time period, SUN PACIFIC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11140(5) because SUN PACIFIC failed to pay Mr. Gonzalez and other aggrieved employees reporting time pay when they reported for work for their scheduled shift but were put to work for less than half of the regular schedule. SUN PACIFIC had a company-wide practice of sending employees home early from their shifts, including before they had worked at least half of their regular shift.

First, SUN PACIFIC failed to pay Mr. Gonzalez and other aggrieved employees reporting time pay when they presented themselves ready for work by waiting at home during a scheduled “on-call” overnight shifts during the winter and awaiting instructions on whether to they needed to show up to protect produce from freezing, but ultimately were not called. SUN PACIFIC did not pay Mr. Gonzalez and other aggrieved employees for at least half of their scheduled day's work when they were subject to SUN PACIFIC's on-call policy and were not called or told not to come into work. For example, Mr. Gonzalez waited at his home during his scheduled “on-call” shifts as required by SUN PACIFIC's on-call policy, but was sometimes not called or told that SUN PACIFIC did not need him to work. When this occurred, SUN PACIFIC did not pay him for at least half of his scheduled standby time or the required minimum reporting time pay.

Second, Mr. Gonzalez and other aggrieved employees would report to work based on the schedule SUN PACIFIC provided to them, but SUN PACIFIC's management would send them home either immediately, or within the first couple hours of work on an extremely hot day or rainy day. Although Mr. Gonzalez and other aggrieved employees would report to work based on the schedule SUN PACIFIC provided to them, SUN PACIFIC would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Mr. Gonzalez and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11140 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11140(4)(C) provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

SUN PACIFIC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11140(4)(C), because SUN PACIFIC failed to pay Mr. Gonzalez and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. For instance, Mr. Gonzalez was required to work for several hours on overnight shifts to protect produce from freezing, and then was required to return several hours later for his scheduled morning shifts. When this occurred, SUN PACIFIC did not always pay Mr. Gonzalez and other aggrieved employees an additional hour at minimum wage. Accordingly, SUN PACIFIC required Mr. Gonzalez and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage in violation of California Labor Code section 1198.

SUN PACIFIC’s failure to provide Mr. Gonzalez and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11140(4)(C). Mr. Gonzalez and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” SUN PACIFIC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Gonzalez’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Gonzalez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in

particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Gonzalez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against SUN PACIFIC for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

Therefore, on behalf of all aggrieved employees, Mr. Gonzalez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

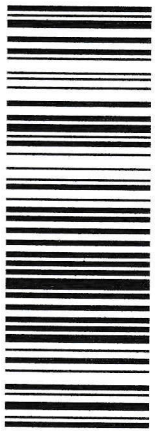
Best Regards,



Anthony Castillo

Copy: SUN PACIFIC FARMING COOPERATIVE, INC. (via U.S. Certified Mail); SUN PACIFIC SHIPPERS, L.P. (via U.S. Certified Mail); SUN PACIFIC MARKETING COOPERATIVE, INC. (via U.S. Certified Mail)

CERTIFIED MAIL



7020 0090 0001 3768 4575

stone
LAW APC
tury Park East, Ste 1000
es, CA 90067

SUN PACIFIC FARMING COOPERATIVE, INC.
1300 EAST MYER AVE.
EXETER CA 93221



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1. Article Addressed to:

SUN PACIFIC FARMING COOPERATIVE,
INC.
1300 EAST MYER AVE.
EXETER CA 93221



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Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

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INC.

Street and Apt. No., or PO Box No.

1300 EAST MYER AVE.

City, State, ZIP+4®

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PS Form 3800, April 2015 PSN 7530-02-000-9047

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Gonzalez v. Sun
Pacific Farming
Cooperative, Inc.

stone
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Century Park East, Ste 1000
Es, CA 90067

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7020 0090 0001 3768 4582



SUN PACIFIC FARMING COOPERATIVE, INC.
P.O. BOX 217
EXETER CA 93221

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1. Article Addressed to:
SUN PACIFIC FARMING COOPERATIVE, INC.
P.O. BOX 217
EXETER CA 93221



9590 9402 4882 9032 7441 44

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4582

PS Form 3811, July 2015 PSN 7530-02-000-9053

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X
☐ Agent
☐ Addressee

B. Received by (Printed Name)
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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| ☒ Certified Mail [®] | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation [™] |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

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☒ Return Receipt (hardcopy)	\$ 2.80
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$

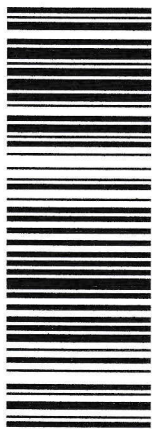
Postage
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Total Postage and Fees
\$ **7.93**

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Street and Apt. No., or PO Box No.
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EXETER CA 93221

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Gonzalez v. Sun Pacific Farming Cooperative, Inc.

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stone

LAW APC

1000
Park East, Ste 1000
Bakersfield, CA 93308

SUN PACIFIC SHIPPERS, L.P.
33374 LERDO HWY
BAKERSFIELD CA 93308



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1. Article Addressed to:

SUN PACIFIC SHIPPERS, L.P.
33374 LERDO HWY
BAKERSFIELD CA 93308



9590 9402 4882 9032 7441 37

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- ☐ Collect on Delivery Restricted Delivery
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- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
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Postage

\$ 1.63

Total Postage and Fees

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BAKERSFIELD CA 93308

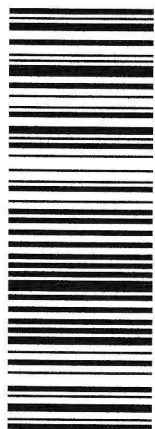
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Here

Gonzalez v. Sun
Pacific Shippers, LP

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

CERTIFIED MAIL



7020 0090 0001 3768 4605

stone

LAW APC

Curry Park East, Ste 1000
Pasadena, CA 90067

SUN PACIFIC MARKETING COOPERATIVE, INC.
1095 E GREEN STREET
PASADENA CA 91106



SENDER: COMPLETE THIS SECTION

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1. Article Addressed to:
SUN PACIFIC MARKETING
COOPERATIVE, INC.
1095 E GREEN STREET
PASADENA CA 91106



9590 9402 4882 9032 7441 20

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4605

PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature

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☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

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- ☐ Adult Signature Restricted Delivery
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- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
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- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

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Total Postage and Fees

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COOPERATIVE, INC.
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PASADENA CA 91106

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Gonzalez v. Sun
Pacific Marketing
Cooperative, Inc.

PS Form 3800, April 2015 PSN 7530-02-000-9047

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SUN PACIFIC FARMING COOPERATIVE,
INC.
P.O. BOX 217
EXETER CA 93221



9590 9402 4882 9032 7441 44

2. Article Number (Transfer from service label)

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

Heidi Hill

C. Date of Delivery

6/1/2020

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

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1. Article Addressed to:

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33374 LERDO HWY
BAKERSFIELD CA 93308



9590 9402 4882 9032 7441 37

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4599

PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature

X

Carson

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Carson

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

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- ☐ Adult Signature Restricted Delivery
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- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

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☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

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1. Article Addressed to:
**SUN PACIFIC MARKETING
COOPERATIVE, INC.
1095 E GREEN STREET
PASADENA CA 91106**



9590 9402 4882 9032 7441 20

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4605

PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

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1. Article Addressed to:

**SUN PACIFIC FARMING COOPERATIVE,
INC.
1300 EAST MYER AVE.
EXETER CA 93221**



9590 9402 4882 9032 7441 51

2. Article Number (Transfer from service label)

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A. Signature

X *gm* *gm*

☒ Agent

☐ Addressee

B. Received by (Printed Name)

Sm Pacific

C. Date of Delivery

6/2

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery
(over \$500)

☐ Priority Mail Express®

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☐ Registered Mail Restricted
Delivery

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ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

May 29, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Nicolas Gonzalez v. Sun Pacific Farming Cooperative, Inc., et al.*

Dear PAGA Administrator:

This office represents Nicolas Gonzalez in connection with his claims under the California Labor Code. Mr. Gonzalez was an employee of SUN PACIFIC FARMING COOPERATIVE, INC.; SUN PACIFIC SHIPPERS, L.P.; and/or SUN PACIFIC MARKETING COOPERATIVE, INC. For the purpose of this letter, Mr. Gonzalez collectively refers to these entities as "SUN PACIFIC."

The employers may be contacted directly at the addresses below:

SUN PACIFIC FARMING COOPERATIVE, INC.
1300 EAST MYER AVE.
EXETER CA 93221

SUN PACIFIC SHIPPERS, L.P.
33374 LERDO HWY
BAKERSFIELD CA 93308

SUN PACIFIC FARMING COOPERATIVE, INC.
P.O. BOX 217
EXETER CA 93221

SUN PACIFIC MARKETING
COOPERATIVE, INC.
1095 E GREEN STREET
PASADENA CA 91106

Mr. Gonzalez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Gonzalez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SUN PACIFIC as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

SUN PACIFIC employed Mr. Gonzalez as an hourly paid, non-exempt employee from approximately 2000 to February 2020. Mr. Gonzalez worked for SUN PACIFIC as a Spray Operator at its location in Lindsay, California. During his employment, Mr. Gonzalez typically worked eight (8) to twelve (12) hours or more per day and five (5) days per week. At the time Mr. Gonzalez's

employment with SUN PACIFIC ended, he earned approximately \$14.00 per hour. His job duties included, without limitation, operating agricultural machinery; mixing, loading, and applying pesticides onto fields; and maintaining equipment and work areas.

SUN PACIFIC committed one or more of the following Labor Code violations against Mr. Gonzalez, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

SUN PACIFIC’s Company-Wide and Uniform Payroll and HR Practices

SUN PACIFIC FARMING COOPERATIVE, INC. and SUN PACIFIC MARKETING COOPERATIVE, INC. are California corporations; and SUN PACIFIC SHIPPERS, L.P. is a California limited partnership. Together, they are one of the largest produce growers in California that owns and manages over 30,000 acres of agricultural land. Upon information and belief, SUN PACIFIC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Exeter, California, for all non-exempt, hourly paid employees working for SUN PACIFIC in California, including Mr. Gonzalez and other aggrieved employees. At all relevant times, SUN PACIFIC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Gonzalez and other aggrieved employees, regardless of its location or position.

Upon information and belief, SUN PACIFIC maintains a centralized Payroll department at its corporate headquarters in Exeter, California, which processes payroll for all non-exempt, hourly paid employees working for SUN PACIFIC in California, including Mr. Gonzalez and other aggrieved employees. Further, SUN PACIFIC issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Gonzalez and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, SUN PACIFIC utilized the same methods and formulas when calculating wages due to Mr. Gonzalez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than ten (10) hours in a day or more than sixty (60) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of ten (10) hours in a day or more than sixty (60) hours in a workweek. The applicable IWC Wage Order further provides that, starting January 1, 2019, employers are required to pay employees working more than nine and one-half (9½) hours in a day or more than fifty-five (55) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of nine and one-half (9½) hours in a day or more than fifty-five (55) hours in a workweek; and starting January 1, 2020, employers are required to pay employees working more

¹ These facts, theories, and claims are based on Mr. Gonzalez’s experience and counsel’s review of those records currently available relating to Mr. Gonzalez’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Gonzalez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

than nine (9) hours in a day or more than fifty (50) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of nine (9) hours in a day or more than fifty (50) hours in a workweek. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including shift differential pay, nondiscretionary bonuses, and incentive pay.

SUN PACIFIC willfully failed to pay all overtime wages owed to Mr. Gonzalez and other aggrieved employees. During the relevant time period, Mr. Gonzalez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of the applicable maximum hours in a day and/or in excess of the applicable maximum hours in a week, because all hours worked were not recorded.

First, during the relevant time period, SUN PACIFIC had a company-wide "on-call" policy, whereby it scheduled Mr. Gonzalez and other aggrieved employees to work "on-call" overnight shifts during the winter. During an "on-call" shift, Mr. Gonzalez and other aggrieved employees had to be available and report to work upon receiving a call from SUN PACIFIC notifying them that they were needed to protect produce from freezing. When scheduled to be "on-call," Mr. Gonzalez and other aggrieved employees were in essence on controlled standby for SUN PACIFIC because they could not use that time freely for their own purposes and were forced to put their lives on hold. For example, when assigned to "on-call" duty, Mr. Gonzalez refrained from making plans because he knew that they had to drop whatever he was doing at a moment's notice if he received a call from SUN PACIFIC to report to work. However, SUN PACIFIC failed to pay Mr. Gonzalez and other aggrieved employees for the time during which they were waiting to receive a call from SUN PACIFIC and unable to use their time for their own purposes.

Second, during the relevant period, SUN PACIFIC had a company-wide policy and/or practice of improperly rounding employee clock-in and clock-out duration times to the nearest quarter-hour or nearest half-hour in their timekeeping system. SUN PACIFIC's rounding policy resulted in the failure to compensate Mr. Gonzalez and other aggrieved employees fully for all hours worked, causing Mr. Gonzalez and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. Upon information and belief, SUN PACIFIC's rounding policy has, and continues to be, unfair and has, over time, resulted in the underpayment of wages to Mr. Gonzalez and other aggrieved employees. To the extent SUN PACIFIC's rounding policy took away time worked that was eligible for overtime, Mr. Gonzalez and other aggrieved employees were denied overtime pay for all hours worked. Alternatively, SUN PACIFIC had, and continues to have, a company-wide policy and/or practice of failing to record hours worked by its employees. Instead, on information and belief, SUN PACIFIC's policy and/or practice is to simply pay employees, including Mr. Gonzalez and other aggrieved employees, for the hours they are scheduled to work. Because SUN PACIFIC failed to accurately record their actual hours worked, Mr. Gonzalez and other aggrieved employees were not paid for all hours worked before or after their scheduled shifts.

Third, SUN PACIFIC, on a company-wide basis, had a practice of failing to schedule meal periods and/or failing to adhere to a schedule of meal periods, which caused Mr. Gonzalez and other aggrieved employees to not be relieved of their duties for compliant meal periods. Additionally, SUN PACIFIC had no policy for providing Mr. Gonzalez and other aggrieved employees with meal periods on days that they worked overnight shifts. As a result of these policies and/or practices, Mr. Gonzalez and other aggrieved employees were required to work through meal periods, in order to complete their assigned tasks. Thus, Mr. Gonzalez and other aggrieved employees performed work during meal periods for which they were not paid.

Fourth, on information and belief, because SUN PACIFIC frowned upon employees accruing meal period penalties, when Mr. Gonzalez and other aggrieved employees failed to clock themselves out at their designated meal period start times, they were subject to SUN PACIFIC altering their time records and deducting time for meal periods that were not taken. Alternatively, SUN PACIFIC's management falsified employee time records by clocking out Mr. Gonzalez and other aggrieved employees at designated start and end times to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that SUN PACIFIC would otherwise owe. Consequently, Mr. Gonzalez and other aggrieved employees performed work during meal periods for which they were not paid.

SUN PACIFIC knew or should have known that as a result of these company-wide practices and/or policies, Mr. Gonzalez and other aggrieved employees were performing assigned duties off-the-clock and during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Gonzalez and other aggrieved employees worked shifts of ten (10) hours a day or more or sixty (60) hours a week or more; shifts of nine and one-half (9 ½) hours a day or more or fifty-five (55) hours a week or more; and/or shifts of nine (9) hours a day or more or fifty (50) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Gonzalez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, SUN PACIFIC did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, SUN PACIFIC paid other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SUN PACIFIC failed to incorporate all compensation, including but not limited to, shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, SUN PACIFIC failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Gonzalez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 14 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11140(2)(G) (defining "Hours Worked").

As stated, SUN PACIFIC systematically, and on a company-wide basis, required Mr. Gonzalez and other aggrieved employees to work "on-call" shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Gonzalez and other aggrieved employees were subject to SUN PACIFIC's control during an "on-call" shift, SUN PACIFIC did not pay Mr. Gonzalez and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work. As also described above, SUN PACIFIC had

a policy of rounding Mr. Gonzalez's and other aggrieved employees' hourly clock-in and clock-out duration times to the quarter-hour or half-hour in their timekeeping system, resulting in the failure to compensate Mr. Gonzalez and other aggrieved employees fully for all hours worked. Alternatively, SUN PACIFIC had a company-wide policy and/or practice of only paying Mr. Gonzalez and other aggrieved employees for their scheduled shifts, rather than their actual hours worked, because SUN PACIFIC failed to track hours worked outside scheduled shifts.

Furthermore, as stated above, due to SUN PACIFIC's failure to schedule meal periods and/or failure to adhere to a schedule of meal periods, Mr. Gonzalez and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Also, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, SUN PACIFIC's management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

Thus, SUN PACIFIC did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, SUN PACIFIC did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, SUN PACIFIC regularly failed to pay at least minimum wages to Mr. Gonzalez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Gonzalez and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest period and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, SUN PACIFIC had a practice of failing to schedule meal periods and/or failing to adhere to a schedule of meal periods, which caused Mr. Gonzalez and other aggrieved employees to not be relieved of their duties for compliant meal periods. SUN PACIFIC also required Mr.

Gonzalez and other aggrieved employees to finish tasks within a tight deadline, such as spraying assigned areas, before they were permitted to take meal periods. As a result, Mr. Gonzalez and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period. For example, during his employment, Mr. Gonzalez would start his meal periods late in order to complete his assigned tasks in compliance with SUN PACIFIC's deadlines. As a further example, some properties that Mr. Gonzalez and other aggrieved employees worked on drew their water from a well. Because the water was turned off at a certain time on these properties, Mr. Gonzalez and other aggrieved employees were told to take their meal periods only after they completed their assignments before the scheduled water shutoff time, and, as a result, took their meal periods after they worked in excess of five (5) hours.

Second, SUN PACIFIC had no policy for providing Mr. Gonzalez and other aggrieved employees with first or second meal periods when they worked overnight shifts. During the summer, SUN PACIFIC scheduled Mr. Gonzalez and other aggrieved employees to work 12-hour shifts but did not provide them with any meal periods at all. As a result of these policies and/or practices, Mr. Gonzalez and other aggrieved employees were not provided with uninterrupted 30-minute meal periods during shifts in which they were entitled to receive first and second meal periods. Mr. Gonzalez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Third, because SUN PACIFIC frowned upon employees accruing meal period penalties, upon information and belief, SUN PACIFIC's management would adjust employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by SUN PACIFIC.

SUN PACIFIC knew or should have known that as a result of policies, Mr. Gonzalez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SUN PACIFIC further knew or should have known that it did not pay Mr. Gonzalez and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, SUN PACIFIC engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Gonzalez and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that SUN PACIFIC did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, SUN PACIFIC did not pay other aggrieved employees at the correct rate of pay for premium wages because SUN PACIFIC systematically failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SUN PACIFIC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Gonzalez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, SUN PACIFIC regularly failed to authorize and permit Mr. Gonzalez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SUN PACIFIC’s company-wide practices, including failing to schedule rest periods, which, coupled with SUN PACIFIC’s assignment of tight deadlines, led to Mr. Gonzalez and other aggrieved employees not being authorized and permitted to take compliant rest periods. SUN PACIFIC’s management also threatened to discipline Mr. Gonzalez and other aggrieved employees whenever they were observed to not be actively working, which further prevented Mr. Gonzalez and other aggrieved employees from being relieved of all duty to take compliant rest periods.

Furthermore, during the relevant time period, SUN PACIFIC maintained a company-wide on-premises rest period policy, which mandated that Mr. Gonzalez and other aggrieved employees remain on SUN PACIFIC’s worksites during their rest periods. Because Mr. Gonzalez and other aggrieved employees were restricted from leaving the worksites during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, SUN PACIFIC effectively maintained control over Mr. Gonzalez and other aggrieved employees during rest periods.

As a result of SUN PACIFIC’s practices and policies, Mr. Gonzalez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during his employment, Mr. Gonzalez missed his rest periods due to SUN PACIFIC’s failure to schedule rest periods.

SUN PACIFIC also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that SUN PACIFIC did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SUN PACIFIC did not pay other aggrieved employees at the correct rate of pay for premium wages because SUN PACIFIC failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SUN PACIFIC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Gonzalez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7 and 1198 & California Code of Regulations Title 8, Section 3395 – Failure to Provide Heat Recovery Periods

California Labor Code section 226.7(a) defines “recovery period” to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that “[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling.” Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore, “[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other.” *Id.* “Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.” *Id.*

During the relevant time period, SUN PACIFIC violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because SUN PACIFIC failed to provide Mr. Gonzalez and other aggrieved employees with recovery periods. For example, Mr. Gonzalez was never provided a shaded area for recovery and was not permitted to take recovery periods in a shaded area while working at various worksites. As a further example, Mr. Gonzalez and his team were disciplined and sent home early when SUN PACIFIC's management found them seeking shelter from the sun and drinking water under some nearby trees.

SUN PACIFIC also has engaged in a company-wide practice and/or policy of not paying all recovery period premiums owed when compliant recovery periods are not provided. Alternatively, to the extent that SUN PACIFIC did pay recovery period premium wages to other aggrieved employees, it did so at the incorrect rates. Because SUN PACIFIC did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums paid for recovery period violations were also paid at an incorrect rate and resulted in an underpayment of recovery period premium wages.

Accordingly, SUN PACIFIC failed to authorize and permit all recovery periods in violation of California Labor Code sections 226.7 and 1198. Mr. Gonzalez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. SUN PACIFIC has not provided Mr. Gonzalez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, SUN PACIFIC has knowingly and intentionally provided Mr. Gonzalez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SUN PACIFIC issued uniform wage statements to Mr. Gonzalez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name and address of the employing entity; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, SUN PACIFIC violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because SUN PACIFIC did not record the time Mr. Gonzalez and other aggrieved employees spent working off-the-clock, improperly rounded their clock-in and clock-out duration times, and deducted time worked from their wage statements and employment records for meal periods that were interrupted or missed (and therefore time for which they should have been paid), SUN PACIFIC did not list the correct amount of gross wages and net wages earned by Mr. Gonzalez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SUN PACIFIC failed to accurately list the total number of hours worked by Mr. Gonzalez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because SUN PACIFIC did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, SUN PACIFIC did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, SUN PACIFIC also failed to list the correct amount of net wages in violation of section 226(a)(5). SUN PACIFIC also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, SUN PACIFIC issued uniform wage statements to Mr. Gonzalez and other aggrieved employees that failed to correctly list the correct name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including, filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc.

SUN PACIFIC systematically, and on a company-wide basis, issued wage statements to Mr. Gonzalez and other aggrieved employees that incorrectly list the employing entity's name. Mr. Gonzalez's and other aggrieved employees' wage statements incorrectly list the employer as "SUN PACIFIC FARMING CO.," and according to the California Secretary of State's website, there is no such entity by the name "SUN PACIFIC FARMING CO." Mr. Gonzalez believes that the correct employing entity that should be listed on employees' wage statements is "SUN PACIFIC FARMING COOPERATIVE, INC." Further, SUN PACIFIC improperly lists the entity address as "EXETER, CA" instead of a full address. *See example wage statement below.*

SUN PACIFIC FARMING CO. • EXETER, CA • FED. I.D. NO. 94-2199616		CHECK DATE 2/27/20		CHECK NO. 64706	
EMP. NO.	NAME	SOC. SECURITY NO.	DEPT.	EXEMPTIONS FED. STATE OTHER	MARK STA.
██████	NICOLAS GONZALEZ	██████████	36	██████	M
				PAY PER. START	PAY PER. END
				2/24/20	3/01/20

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SUN PACIFIC willfully failed to maintain accurate payroll records for Mr. Gonzalez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Gonzalez's and other aggrieved employees' total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SUN PACIFIC failed, on a company-wide basis, to keep accurate records of work period and/or meal period start and stop times for Mr. Gonzalez and other aggrieved employees, in violation of section 1198. As stated, SUN PACIFIC engaged in company-wide practices and/or policies of failing to record actual hours worked and falsifying Mr. Gonzalez's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of shift and meal start and end times for Mr. Gonzalez and other aggrieved employees. Furthermore, in light of SUN PACIFIC's failure to provide Mr. Gonzalez and other aggrieved employees with second 30-minute meal periods to which they were entitled, SUN PACIFIC kept no records of meal start and end times for second meal periods.

Because SUN PACIFIC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Gonzalez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Gonzalez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Gonzalez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, SUN PACIFIC failed to pay Mr. Gonzalez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premium wages; and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Gonzalez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

SUN PACIFIC willfully failed to pay Mr. Gonzalez and other aggrieved employees who are no longer employed by SUN PACIFIC all their earned wages, including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premium wages; and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving SUN PACIFIC's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Gonzalez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11140 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11140(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

During the relevant time period, SUN PACIFIC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11140(5) because SUN PACIFIC failed to pay Mr. Gonzalez and other aggrieved employees reporting time pay when they reported for work for their scheduled shift but were put to work for less than half of the regular schedule. SUN PACIFIC had a company-wide practice of sending employees home early from their shifts, including before they had worked at least half of their regular shift.

First, SUN PACIFIC failed to pay Mr. Gonzalez and other aggrieved employees reporting time pay when they presented themselves ready for work by waiting at home during a scheduled “on-call” overnight shifts during the winter and awaiting instructions on whether to they needed to show up to protect produce from freezing, but ultimately were not called. SUN PACIFIC did not pay Mr. Gonzalez and other aggrieved employees for at least half of their scheduled day’s work when they were subject to SUN PACIFIC’s on-call policy and were not called or told not to come into work. For example, Mr. Gonzalez waited at his home during his scheduled “on-call” shifts as required by SUN PACIFIC’s on-call policy, but was sometimes not called or told that SUN PACIFIC did not need him to work. When this occurred, SUN PACIFIC did not pay him for at least half of his scheduled standby time or the required minimum reporting time pay.

Second, Mr. Gonzalez and other aggrieved employees would report to work based on the schedule SUN PACIFIC provided to them, but SUN PACIFIC’s management would send them home either immediately, or within the first couple hours of work on an extremely hot day or rainy day. As another example, on one occasion, Mr. Gonzalez reported to work and was sent home by SUN PACIFIC after completing one (1) hour of work cleaning his work area. Although Mr. Gonzalez and other aggrieved employees would report to work based on the schedule SUN PACIFIC provided to them, SUN PACIFIC would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Mr. Gonzalez and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11140 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11140(4)(C) provides that, “When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

SUN PACIFIC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11140(4)(C), because SUN PACIFIC failed to pay Mr. Gonzalez and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. For instance, Mr. Gonzalez was required to work for several hours on overnight shifts to protect produce from freezing, and then was required to return several hours later for his scheduled morning shifts. When this occurred, SUN PACIFIC did not always pay Mr. Gonzalez and other aggrieved employees an additional hour at minimum wage. Accordingly, SUN PACIFIC required Mr. Gonzalez and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage in violation of California Labor Code section 1198.

SUN PACIFIC's failure to provide Mr. Gonzalez and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11140(4)(C). Mr. Gonzalez and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” SUN PACIFIC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Gonzalez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Gonzalez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Gonzalez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against SUN PACIFIC for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

Therefore, on behalf of all aggrieved employees, Mr. Gonzalez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

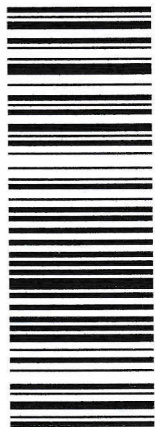
Best Regards,



Anthony Castillo

Copy: SUN PACIFIC FARMING COOPERATIVE, INC. (via U.S. Certified Mail); SUN PACIFIC SHIPPERS, L.P. (via U.S. Certified Mail); SUN PACIFIC MARKETING COOPERATIVE, INC. (via U.S. Certified Mail)

CERTIFIED MAIL



7020 0090 0001 3768 4636

stone
LAW APC
ury Park East, Ste 1000
es, CA 90067

SUN PACIFIC FARMING COOPERATIVE, INC.
1300 EAST MYER AVE.
EXETER CA 93221



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1. Article Addressed to:

SUN PACIFIC FARMING COOPERATIVE,
INC.
1300 EAST MYER AVE.
EXETER CA 93221



9590 9402 4882 9032 7448 92

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4636

PS Form 3811, July 2015 PSN 7530-02-000-9053

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☐ Agent
☐ Addressee

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3. Service Type

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| ☐ Adult Signature | ☐ Priority Mail Express® |
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| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
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| ☐ Insured Mail Restricted Delivery (over \$500) | |

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| ☒ Return Receipt (hardcopy) | \$ 2.50 |
| ☐ Return Receipt (electronic) | \$ |
| ☐ Certified Mail Restricted Delivery | \$ |
| ☐ Adult Signature Required | \$ |
| ☐ Adult Signature Restricted Delivery | \$ |

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

SUN PACIFIC FARMING COOPERATIVE,
INC.

Street and Apt. No., or PO Box No.

1300 EAST MYER AVE.

City, State, ZIP+4®

EXETER CA 93221

PS Form 3800, April 2015 PSN 7530-02-000-9047

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Gonzalez v. Sun
Pacific Farming
Cooperative, Inc.

7020 0090 0001 3768 4636

stone
LAW APC
Purvey Park East, Ste 1000
es, CA 90067



7020 0090 0001 3768 4643



SUN PACIFIC FARMING COOPERATIVE, INC.
P.O. BOX 217
EXETER CA 93221

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SUN PACIFIC FARMING COOPERATIVE, INC.
P.O. BOX 217
EXETER CA 93221



9590 9402 4882 9032 7441 13

2. Article Number (Transfer from service label)

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- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery over \$500

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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Extra Services & Fees (check box, add fee as appropriate)

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- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

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City, State, ZIP+4®

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Gonzalez v. Sun Pacific Farming Cooperative, Inc.

PS Form 3800, April 2015 PSN 7530-02-000-9047

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1. Article Addressed to:

SUN PACIFIC SHIPPERS, L.P.
33374 LERDO HWY
BAKERSFIELD CA 93308



9590 9402 4882 9032 7440 90

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4612

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☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery over \$500

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

CERTIFIED MAIL



7020 0090 0001 3768 4612

SUN PACIFIC SHIPPERS, L.P.
33374 LERDO HWY
BAKERSFIELD CA 93308

stone

LAW APC

Century Park East, Ste 1000
Bakersfield, CA 90067

7020 0090 0001 3768 4612

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Extra Services & Fees (check box, add fee as appropriate)

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- ☐ Return Receipt (electronic) \$
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- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

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BAKERSFIELD CA 93308

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Gonzalez v. Sun
Pacific Shippers
L.P.

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7020 0090 0001 3768 4629

stone

LAW APC

Century Park East, Ste 1000
Pasadena, CA 90067



SUN PACIFIC MARKETING COOPERATIVE, INC.
1095 E GREEN STREET
PASADENA CA 91106

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
**SUN PACIFIC MARKETING
COOPERATIVE, INC.
1095 E GREEN STREET
PASADENA CA 91106**



9590 9402 4882 9032 7441 06

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

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☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
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Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

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**SUN PACIFIC MARKETING
COOPERATIVE, INC.
1095 E GREEN STREET
PASADENA CA 91106**

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Gonzalez v. Sun
Pacific Marketing
Cooperative, Inc.

PS Form 3800, April 2015 PSN 7530-02-000-9047

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I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

**FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA
LABOR CODE §§ 2698, *ET SEQ.***

Ronald H. Barsamian
Patrick S. Moody
Faith L. Driscoll
BARSAMIAN & MOODY
1141 W. Shaw Avenue, #104
laborlaw@theemployerslawfirm.com

- EXECUTED** this document on August 31, 2020, at Los Angeles, California.

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