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Attorneys for Plaintiff
ANA E. RAMIREZ

SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN

ANA E. RAMIREZ, an individual, on behalf
of herself and all others similarly situated,

Plaintiffs,

vs.

WONDERFUL ORCHARDS, LLC;
PARAMOUNT CITRUS; CAL AG
RESOURCES, INC.; and DOES 1-50,

Defendants.

Case No. BCV-20-102050

COMPLAINT FOR CIVIL PENALTIES
PURSUANT TO PRIVATE ATTORNEY
GENERAL ACT OF 2004 (LABOR CODE
§§ 2698 ET SEQ.)

1 Plaintiff Ana E. Ramirez (“PLAINTIFF”), on behalf of herself, other similarly aggrieved
2 employees of Defendants Wonderful Orchards, LLC, Cal AG Resources, Inc., and Paramount
3 Citrus, and on behalf of the State of California, hereby complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action by PLAINTIFF on behalf of herself, other similarly
6 aggrieved employees, and the State of California against Defendants Wonderful Orchards, LLC,
7 Cal AG Resources, Inc., and Paramount Citrus and Doe Defendants 1-50 (collectively,
8 “DEFENDANTS”), pursuant to the California Private Attorney General Act, Labor Code
9 sections 2698 *et seq.* (“PAGA”) to recover civil penalties (75% payable to the Labor Workforce
10 Development Agency and 25% payable to aggrieved employees) for failure to pay all minimum
11 and overtime wages, failure to provide adequate meal breaks, failure to pay meal break
12 premiums, failure to provide accurate wage statements, failure to reimburse business expenses,
13 failure to timely pay all wages upon cessation of employment to DEFENDANTS’ seasonal
14 employees in California, and failure to comply with California’s paid sick leave law.

15 **JURISDICTION AND VENUE**

16 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
17 PAGA.

18 3. Venue is proper in this Judicial district and the County of Kern pursuant to
19 California Code of Civil Procedure § 395.5 because DEFENDANTS employed PLAINTIFF on
20 farms located in the County of Kern, including in the city of Shafter, and the acts, omissions, and
21 conduct alleged by PLAINTIFF herein occurred in this county.

22 **PARTIES**

23 4. Defendant CAL AG RESOURCES INC., a California corporation, is a labor
24 contractor that provides field workers to Defendants PARAMOUNT CITRUS and
25 WONDERFUL ORCHARDS, LLC, a Delaware limited liability company. PARAMOUNT
26 CITRUS and WONDERFUL ORCHARDS, LLC grow and harvest pomegranates, almonds and
27 pistachios.

1 5. Plaintiff ANA E. RAMIREZ ('PLAINTIFF') worked as a seasonal agricultural
2 employee of DEFENDANTS from 2018 through November 2019.

3 6. PLAINTIFF is informed and believes that DOES 1 through 50 are corporations,
4 individuals, limited liability partnerships, limited liability companies, general partnerships, sole
5 proprietorships or are other business entities or organizations of a nature not currently known to
6 PLAINTIFF.

7 7. PLAINTIFF is unaware of the true names of Defendant DOES 1 through 50.
8 PLAINTIFF sues said Defendants by said fictitious name, and will amend this complaint when
9 the true names and capacities are ascertained or when such facts pertaining to liability are
10 ascertained, or as permitted by law or by the Court. PLAINTIFF is informed and believes that
11 each of the fictitiously named Defendants is in some manner responsible for the events and
12 allegations set forth in this complaint.

13 8. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein
14 mentioned each Defendant, including all Defendants sued under fictitious names, was the
15 employee, or representative of each of the remaining Defendants, and in doing the things
16 hereinafter alleged, was at times acting within the course and scope of this employment, and at
17 other times, acting in his or her own individual capacity. In the alternative, each of the
18 individually named Defendants, acted in concert and in furtherance of a fraudulent plan and
19 scheme and each actively participated in the wrongful acts alleged in this complaint.

20 **FACTUAL BACKGROUND**

21 9. At all times during the liability period, DEFENDANTS employed PLAINTIFF
22 and other similarly situated hourly paid employees to perform services at PARAMOUNT
23 CITRUS' and WONDERFUL ORCHARDS, LLC'S farms in Kern County, California.

24 10. At all times during the liability period, PLAINTIFF and other similarly situated
25 seasonal employees did not receive all money owed to them at the time their employment with
26 DEFENDANTS ceased and still have not received such pay.

27 11. DEFENDANTS, in violation of Labor Code Section 201, do not, as a matter of
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1 practice, immediately pay their seasonal employees' final wages when layoffs or other forms of
2 discharge occur at the end of seasonal employment, typically paying the employees
3 approximately one week after discharge. For example, PLAINTIFF's last day of work in 2019
4 was on November 9, 2019; however, DEFENDANTS did not pay her final wages until
5 November 15, 2019, six days late. DEFENDANTS' conduct in this regard was willful.

6 12. When working in DEFENDANTS' fields, including during the one year period
7 before PLAINTIFF notified DEFENDANTS and the LWDA of her claims, PLAINTIFF and
8 other similarly situated aggrieved employees were suffered and permitted to work before the
9 start of their shifts to gather bags/sacks from their crew leader. These bags/sacks are used to
10 transfer the crops onto boxes and crates that are transported by a tractor bed. They performed this
11 work with the knowledge of and at the direction of their supervisors. Similarly, after the end of
12 each shift, PLAINTIFF and other similarly employed persons are required to return these bags to
13 their crew leader but are only paid until the end of the scheduled shift time. Therefore,
14 PLAINTIFF and other similarly employed persons are also not paid for the five minutes of work
15 time required after their scheduled shift time. PLAINTIFF and other similarly situated aggrieved
16 employees were not paid all wages they were owed for the time they spent performing work
17 during this unrecorded pre-shift time in violation of Labor Code Sections 510, 1197 and IWC
18 Wage Order 14-2001, subsections 3 and 4.

19 13. Labor Code § 512 generally requires that employees working shifts of more than
20 five hours be provided with a meal period within the first five hours of work, and that employees
21 working shifts of more than ten hours be provided with a second meal period. Lab. Code § 512;
22 *see also* Section 11 of the applicable Wage Orders, including Wage Orders 13 and 14.
23 Employees are, therefore, entitled to one additional hour of pay at the employee's regular rate of
24 pay for every day that a meal period was not provided or is provided late. *See id.*; Lab. Code §
25 226.7(c).

26 14. During PLAINTIFF's employment, DEFENDANTS regularly failed to provide,
27 authorize, and/or permit to PLAINTIFF and other similarly employed persons meal periods
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1 within the first five hours of work, as required by California law. DEFENDANTS released
2 PLAINTIFF and other similarly employed persons for their meal periods five hours after the
3 scheduled start time of their shifts. For example, PLAINTIFF was required to be at her
4 workplace in the field no later than 7:00 a.m. and was released for her meal period precisely at
5 12:00 p.m. However, DEFENDANTS required PLAINTIFF to retrieve bags/sacks from her crew
6 leader at least five minutes before the start of her shift. Due to the unaccounted five minutes of
7 pre-shift work time, each meal period that was taken at 12:00 p.m. was taken after more than five
8 hours of work and was, therefore, late. Accordingly, DEFENDANTS did not provide
9 PLAINTIFF and similarly employed persons with their meal periods in compliance with
10 California law. DEFENDANTS did not pay PLAINTIFF and the other similarly situated
11 aggrieved employees an additional hour as premium pay, as required by California law.
12 DEFENDANTS also did not pay break premiums at the employee's regular rate of pay in
13 compliance with California law, which requires incentive pay to be included in the calculation of
14 the regular rate of pay. In fact, PLAINTIFF and other similarly employed persons earned
15 incentive pay (indicated on wage statements as "Bonus").

16 15. At all times during the liability period, PLAINTIFF and other similarly employed
17 persons are paid less than two times the minimum wage. Wage Order 14, Section 9(B); *see also*
18 California Code of Regulations, Title 8 §3384 (entitled "Hand Protection", requiring employers
19 to provide gloves). As such, DEFENDANTS are required to provide all necessary tools and
20 equipment. Likewise, Labor Code § 2802 provides that "[a]n employer shall indemnify his or her
21 employee for all necessary expenditures or losses incurred by the employee in direct
22 consequence of the discharge of his or her duties." DEFENDANTS require employees to wear
23 gloves while they work. During the pomegranate season, DEFENDANTS provided PLAINTIFF
24 and others with their first pair of gloves. PLAINTIFF and other similarly employed persons were
25 then required to purchase their own replacement gloves throughout the season. Typically,
26 PLAINTIFF bought two additional pairs of gloves during the pomegranate season at an average
27 of \$9 per pair. During the almond season, DEFENDANTS did not provide any gloves.

1 PLAINTIFF and other aggrieved employees each purchased a box of gloves at \$8 per box at the
2 beginning of the almond season. The box of gloves was used throughout the season.

3 PLAINTIFF and other similarly employed persons were not reimbursed for these purchases.

4 16. All employers in California are required to provide paid sick leave to all
5 employees, unless the employee is exempt from coverage, which PLAINTIFF was not. Labor
6 Code § 245.5(b). Employees who work in California for 30 or more days within a year from the
7 commencement of employment are entitled to paid sick leave. Labor Code § 246. An employee
8 is entitled to use accrued paid sick leave on the 90th day of employment. *Id.* An employee who is
9 rehired by the same employer within a year is entitled to the reinstatement of all previously
10 accrued sick leave and may begin to use the sick leave on the first day of rehire. The reason for
11 the employee's initial separation from employment does not matter. Labor Code § 246(f)(2).
12 PLAINTIFF worked more than 90 days for DEFENDANTS and accrued paid sick leave. While
13 her wage statements indicated that she had accrued paid sick leave, it stated that it was not
14 available for use by PLAINTIFF until after January 31, 2020, a date after the end of the 2019
15 season when she no longer had a guarantee of work, and a date more than 90 days from the date
16 PLAINTIFF began working for DEFENDANTS. Accordingly, DEFENDANTS violated
17 California's paid sick leave law by prohibiting PLAINTIFF and other similarly employed
18 persons from using accrued paid sick leave when they were eligible to use it under the law.

19 **COMPLIANCE WITH NOTIFICATION REQUIREMENTS**

20 17. On June 25, 2020, PLAINTIFF, through her counsel, sent a certified letter to the
21 California Labor and Workforce Development Agency ("LWDA") informing it that
22 DEFENDANTS failed to meet their obligations under California law with regard to the
23 payment of final wages. Attached hereto as **Exhibit A** is a true and correct copy of the June 25,
24 2020 letter also sent to defendants Wonderful Orchards, LLC, Cal AG Resources, Inc., and
25 Paramount Citrus at the offices of their Agents for Service of Process.

26 18. To date, more than 65 days after the June 25, 2020 PAGA Letter was submitted,
27 the LWDA has not responded.

1 19. The PAGA Letter outlined PLAINTIFF’s claims for violations of the California
2 Labor Code and the applicable wage orders on behalf of herself, the State of California and
3 other aggrieved employees.

4 20. Accordingly, PLAINTIFF exhausted administrative remedies as required by
5 Labor Code § 2699.3.

6 **FIRST CAUSE OF ACTION**

7 **CIVIL PENALTIES UNDER PAGA**

8 **(By PLAINTIFF and Aggrieved Employees against DEFENDANTS)**

9 21. PLAINTIFF incorporates all of the foregoing paragraphs of this complaint as if
10 fully alleged herein.

11 22. Under the Private Attorney General Act, Labor Code §§ 2698-99 (“PAGA”),
12 private parties may recover civil penalties for violations of the California Labor Code, including
13 sections 510, 512, 1194, 1197, 201, 202, 203, 226.7, 246, 2802 and the Industrial Welfare
14 Commission’s (“IWC”) Wage Orders, including IWC Wage Order 13 and 14. PAGA penalties
15 are in addition to any other relief available under the Labor Code.

16 23. As set forth above, DEFENDANTS violated the California Labor Code by
17 consistently failing to employ PLAINTIFF and other similarly situated employees in compliance
18 with California law.

19 24. At all times relevant to this action, PLAINTIFF and other aggrieved employees
20 were employees of DEFENDANTS entitled to the benefits of the IWC Wage Orders, including
21 Wage Orders 13 and 14.

22 25. At all times relevant hereto, California Labor Code §§ 1194(a) and 1197 and the
23 applicable wage orders, have required DEFENDANTS to pay their employees the applicable
24 minimum wage for all hours worked.

25 26. PLAINTIFF and the other aggrieved employees were not paid by
26 DEFENDANTS, during the relevant period, the applicable minimum wage for all hours worked
27 because DEFENDANTS required PLAINTIFF and others to perform work off the clock before
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1 the start of their shift and after the end of their shift for which DEFENDANTS did not pay them,
2 as alleged above.

3 27. By failing to pay PLAINTIFF and other aggrieved employees who performed pre-
4 shift work, DEFENDANTS willfully breached their obligations under Section 4 of the applicable
5 wage orders, including Wage Orders 13 and 14.

6 28. At all relevant times, PLAINTIFF and other aggrieved employees were
7 employees of DEFENDANTS covered by the meal period provisions of Labor Code Sections
8 226.7 and 512, and the applicable wage orders, including Wage Orders 13 and 14.

9 29. Pursuant to Labor Code Sections 226.7 and 512, and the applicable wage orders,
10 PLAINTIFF and other aggrieved employees were entitled to a meal period of at least 30 minutes
11 for each workday they worked more than 5 hours in any workday, and one additional hour of pay
12 for every day that a timely meal period was not provided.

13 30. DEFENDANTS failed to provide PLAINTIFF and other aggrieved employees
14 with timely, uninterrupted, duty free meal periods in accordance with Labor Code Section 226.7
15 and 512, and the applicable wage orders. During the relevant period, DEFENDANTS
16 maintained and continue to maintain a policy or practice of releasing aggrieved employees,
17 including PLAINTIFF, late for their meal periods, as alleged above.

18 31. DEFENDANTS failed to provide PLAINTIFF and other aggrieved employees the
19 additional hour of pay required by Labor Code Section 226.7 and the applicable wage orders for
20 the meal period violations alleged herein. PLAINTIFF is informed and believes and thereon
21 alleges that at all relevant times within the relevant period, DEFENDANTS maintained and
22 continue to maintain a policy or practice of not paying additional pay to employees for meal
23 period violations and at the correct regular rate of pay to factor in all forms of incentive pay.

24 32. PLAINTIFF and the other similarly aggrieved employees were seasonal
25 employees of DEFENDANTS covered by Labor Code Section 201 whose seasonal employment
26 was terminated by DEFENDANTS during the relevant period.

27 33. Labor Code Section 201 provides: “(a) If an employer discharges an employee,
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1 the wages earned and unpaid at the time of discharge are due and payable immediately. An
2 employer who lays off a group of employees by reason of the termination of seasonal
3 employment in the curing, canning, or drying of any variety of perishable fruit, fish or
4 vegetables, shall be deemed to have made immediate payment when the wages of said
5 employees are paid within a reasonable time as necessary for computation and payment thereof;
6 provided, however, that the reasonable time shall not exceed 72 hours, and further provided that
7 payment shall be made by mail to any employee who so requests and designates a mailing
8 address therefor.”

9 34. A layoff, for purposes of Labor Code Section 201, irrespective of the promise or
10 prospect of reemployment for another season, is a discharge.

11 35. Pursuant to Labor Code Section 201, PLAINTIFF and other similarly aggrieved
12 employees were entitled upon cessation of employment with DEFENDANTS to timely payment
13 of all wages earned and unpaid prior to termination and/or discharge, including layoff.
14 Employees who were discharged were entitled to payment of all wages earned and unpaid prior
15 to discharge immediately upon termination.

16 36. DEFENDANTS failed to pay PLAINTIFF and other similarly employed persons
17 all wages earned and unpaid prior to termination timely in accordance with Labor Code Section
18 201 and 202. PLAINTIFF is informed and believes and thereon alleges that at all relevant times
19 within the applicable limitations period, DEFENDANTS maintained and continue to maintain a
20 policy or practice of not paying terminated and laid off seasonal employees all their final wages
21 earned before termination or layoff due under Labor Code Section 201.

22 37. DEFENDANTS’ failure to pay PLAINTIFF and other similarly employed
23 persons all wages earned prior to termination in accordance with Labor Code Section 201 was
24 willful. DEFENDANTS had the ability to pay all wages earned by employees prior to
25 termination in accordance with Labor Code Section 201, but intentionally adopted policies or
26 practices incompatible with the requirements of Labor Code Section 201.

27 38. Pursuant to Labor Code Section 203, PLAINTIFF and other similarly employed
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1 persons were entitled to continuation of their wages, from the day they earned and unpaid wages
2 were due upon termination until paid, up to a maximum of 30 days. DEFENDANTS did not
3 comply with their obligations under Section 203.

4 39. As alleged above, DEFENDANTS violated Labor Code Section 2802 and Section
5 9(B) of Wage Order 14, DEFENDANTS failed to reimburse PLAINTIFF and other similarly
6 employed persons for business expenses, including the purchase of gloves and replacement
7 gloves needed to perform the work for DEFENDANTS.

8 40. As alleged above, DEFENDANTS violated Labor Code Section 246 by
9 prohibiting PLAINTIFF and other similarly employed persons from using accrued paid sick
10 leave when they were eligible to use it under the law.

11 41. Under the PAGA, PLAINTIFF and all other aggrieved employees are entitled to
12 recover the maximum civil penalties permitted by law from DEFENDANT for the Labor Code
13 violations alleged in this Complaint.

14 42. PLAINTIFF and all other aggrieved employees are also entitled to recover their
15 attorneys' fees and costs under Labor Code § 2699.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of himself and all other aggrieved employees and the
18 State of California, prays for relief and judgment against Defendants as follows:

- 19 1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
20 25% payable to aggrieved employees);
21 2. Costs;
22 3. Reasonable attorney's fees; and
23 4. Such other and further relief as this Court may deem just and proper.

24 Dated: September 1, 2020

MOSS BOLLINGER LLP

25
26 By: 
Ari E. Moss
27 Attorneys for Plaintiff ANA E. RAMIREZ
28

EXHIBIT A



Moss Bollinger
LLP

Ari E. Moss

310.982.2984/fax: 818.963.5954
ari@mossbollinger.com

June 25, 2020

VIA PAGA ONLINE FILING

Secretary Julie A. Su
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Wonderful Orchards, LLC
Agent for Service of Process
CT Corporation System
818 W. Seventh St., Suite 930
Los Angeles, CA, 90017

Cal AG Resources, Inc.
Agent for Service of Process
Santiago Martin Jr
3908 W Caldwell Ave
Visalia, CA 93277

Paramount Citrus
1901 S. Lexington St,
Delano, CA 93215

Re: Notice pursuant to Labor Code Section 2699.3(a)(1)
Labor Code Private Attorney General Act ("PAGA")

Employer: Cal AG Resources, Inc., Paramount Citrus, and Wonderful Orchards, LLC,

Employee: Ana E. Ramirez, on behalf of herself and on behalf of all current and former
hourly employees of Cal AG Resources, Inc. and Wonderful Orchards, LLC

Dear Secretary Su:

Pursuant to the Private Attorney General Act of 2004, California Labor Code § 2698 *et seq.*
("PAGA"), representative employee, Ana E. Ramirez, on behalf of herself and all other similarly

situated California employees who work or worked for Cal AG Resources, Inc., Paramount Citrus, and Wonderful Orchards, LLC (“Defendants”), which violated the California Labor Code throughout Ms. Ramirez’s employment and within the one year prior to the mailing of this letter.

General Facts

Defendant Cal AG Resources Inc., is a labor contractor that provides field workers to Defendants Paramount Citrus and Wonderful Orchards, LLC. Paramount Citrus and Wonderful Orchards, LLC grow and harvest pomegranates, almonds and pistachios. Ms. Ramirez worked as a seasonal employee of Defendants from 2018 through November 2019.

During her employment, Ms. Ramirez and similarly employed individuals were regularly subjected to the following violations of California law for which they are entitled to PAGA penalties.

Unpaid Minimum Wages

At all relevant times, Defendants employed Ms. Ramirez and other similarly employed individuals subject to Labor Code Section 1197 and the applicable Industrial Welfare Commission (“IWC”) Wage Orders, including Wage Order 14.

Under Labor Code Section 1197 and the applicable Wage Orders, Ms. Ramirez and other similarly employed individuals were entitled to receive minimum wages for all hours worked.

Defendants failed to pay all wages for all hours worked in violation of Labor Code Section 1197 and Sections 3 and 4 of the applicable Wage Orders, including Wage Order 14. Ms. Ramirez and other similarly employed individuals were required to begin work five minutes before their scheduled shift time in order to obtain bags/sacks from their crew leader. These bags/sacks are used to transfer the crops onto boxes and crates that are transported by a tractor bed. Ms. Ramirez and other similarly employed individuals are not paid for this pre-shift work and are only paid from the start of their scheduled shift time. Therefore, Defendants’ employees are not paid for the five minutes of work time required before their scheduled shift time. Similarly, after the end of each shift, Ms. Ramirez and other similarly employed individuals are required to return these bags to their crew leader but are only paid until the end of the scheduled shift time. Therefore, Defendants’ employees are also not paid for the five minutes of work time required after their scheduled shift time.

As Defendants failed to pay all minimum wages properly, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Late and Interrupted Meal Periods

During Ms. Ramirez's employment, Defendants regularly failed to provide, authorize, and/or permit her and other similarly employed Californians timely 30-minute meal periods, as required by California law.

Under Labor Code Sections 226.7 and 512, and Section 11 of the applicable Wage Orders, including Wage Order 14, Ms. Ramirez and other similarly situated employees were entitled to a meal period of at least 30 minutes for each workday they worked more than 5 hours in any workday. Defendants were required to allow Ms. Ramirez and other similarly situated employees to begin their mandated meal period before completing five hours of work. Additionally, they were entitled to one additional hour of pay for every day that a timely meal period was not provided.

Ms. Ramirez and other similarly employed individuals are required to be at their workplace in the field at 7:00 a.m. but are required to arrive five minutes before the start of their shift time to retrieve their crop bags from their crew leader. This pre-shift task constitutes time worked. A lunch break is then given precisely at 12:00 p.m. Ms. Ramirez and other similarly employed individuals take their meal breaks at the direction of their crew leader, and often take their meal periods at the same time as all other employees. Due to the unaccounted 5 minutes of work time, each meal period that was taken at 12:00 p.m. is taken after five hours of work and is, therefore, late.

Because Defendants released Ms. Ramirez for her meal break, Defendants knew that she had worked more than five hours on shifts on which she was entitled to timely meal periods. When said meal periods were late, Defendants did not pay meal period premium wages, as required by California Labor Code Sections 512, 226.7 and Section 11 of the applicable Wage Orders, including Wage Order 14. Ms. Ramirez was entitled to meal period premium wages paid at her regular rate of pay, which includes incentive pay she and other crew members received. Attached hereto as Exhibit 1 is a copy of Ms. Ramirez's wage statement given on November 15, 2019, which shows that she received incentive pay during the pay period of November 4-November 10, 2019.

Inaccurate Wage Statements

Ms. Ramirez and similarly employed Californians received wage statements that did not list all wages earned, including the minimum and premium wages discussed above. As the above infractions explain, Ms. Ramirez and similarly employed persons were entitled to minimum wages for pre-shift work. Defendants' employees were deprived of minimum wages and received wage statements that did not state all wages earned. Such an omission gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337) and entitles Ms. Ramirez and other similarly employed individuals

to penalty payments pursuant to Labor Code Section 226.

Ms. Ramirez and other similarly employed individuals are also entitled to premium wages that were not paid and, therefore, are entitled to penalty payments pursuant to Labor Code Section 226. *Azpeitia v. Tesoro Ref. & Mktg. Co. LLC*, No. 17-CV-00123-JST, 2017 WL 3115168, at *8 (N.D. Cal. July 21, 2017) (“the payments required by section 226.7 should be considered wages, and that the Plaintiffs may therefore bring a derivative claim under section 226.”).

Unpaid Final Wages

Throughout Ms. Ramirez’s employment, Defendants employed her and other similarly employed individuals on a seasonal basis. Many employees would often return to work season after season for many years. Some only worked a few or only one season.

Ms. Ramirez and other similarly employed persons are covered by Labor Code Section 201 and were “discharged” at the end of their seasonal work within the meaning of Labor Code Section 201.

Pursuant to Labor Code Section 201, Defendants owed Ms. Ramirez and other similarly employed individuals immediate payment of their final wages at the time of each of their discharges. However, Defendants did not pay final wages at the time of discharge. Instead, Ms. Ramirez and similarly employed persons had to wait approximately one week to receive their final wages. For example, Ms. Ramirez’s last day of work in 2019 was on November 9, 2019; however, Defendants did not pay her final wages until November 15, 2019, six days late. See Exhibit 1. Defendants therefore maintained a policy or practice of paying seasonally employed persons their final wages without regard for the timing requirement of Labor Code Section 201. Pursuant to Labor Code Section 203, Ms. Ramirez and other similarly employed individuals are entitled to continuation of their wages, from the day of each discharge they experienced until the wages were paid, up to a maximum of thirty (30) days per discharge.

Moreover, Ms. Ramirez and others did not receive all earned wages, and the premium wages for late meal periods to which they were entitled. Ms. Ramirez and those similarly situated, upon discharge or termination, did not receive all owed wages on the date of said discharge or termination, or within 72 hours if they resigned. Therefore, Defendants violated and continue to violate Labor Code Sections 201 and 202, because they have not paid the aforementioned wages and wage premiums.

Failure to Reimburse

Defendants require employees to wear gloves while they work. During the pomegranate season, Defendants provided Ms. Ramirez, and other similarly employed individuals with their first pair of gloves. Ms. Ramirez and other aggrieved employees were then required to purchase their own

replacement gloves throughout the season. Typically, employees bought two additional pairs of gloves during the pomegranate season at an average of \$9 per pair. During the almond season, Defendants did not provide any gloves. Ms. Ramirez and other aggrieved employees each purchased a box of gloves at \$8 per box at the beginning of the almond season. The box of gloves was used throughout the season. Ms. Ramirez and other similarly situated employees were not reimbursed for these purchases.

Pursuant to California Labor Code Section 2802:

“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...”

Wage Order 14, Section 9(B) also states that an employer shall provide necessary tools or equipment, except in cases where the employee is paid two times the minimum wage. *See also* California Code of Regulations, Title 8 §3384 (entitled “Hand Protection”, requiring employers to provide gloves).

Here, Ms. Ramirez was paid \$13.50 an hour. Similarly situated employees were also paid less than two times the minimum wage. As such, Defendants was required to provide all necessary tools and equipment. Moreover, pursuant to Labor Code Section 2802, Defendants were required to reimburse all necessary expenditures. Here, Defendants were required to indemnify Ms. Ramirez, and all similarly situated employees for gloves purchased in direct consequence of the discharge of their duties. Therefore, Defendants have violated Labor Code Section 2802, by requiring its employees to purchase their own gloves and failing to reimburse the expense.

Violation of California Paid Sick Leave

All employers in California are required to provide paid sick leave to all employees, unless the employee is exempt from coverage, which Ms. Ramirez was not. Labor Code § 245.5(b). Employees who work in California for 30 or more days within a year from the commencement of employment are entitled to paid sick leave. Labor Code § 246. An employee is entitled to use accrued paid sick leave on the 90th day of employment. *Id.* An employee who is rehired by the same employer within a year is entitled to the reinstatement of all previously accrued sick leave and may begin to use the sick leave on the first day of rehire. The reason for the employee’s initial separation from employment does not matter. Labor Code § 246(f)(2). Ms. Ramirez worked more than 90 days for Defendants and accrued paid sick leave. While her wage statements indicated that she had accrued paid sick leave, it stated that it was not available for use by Ms. Ramirez until after January 31, 2020, a date after the end of the 2019 season when she no longer had a guarantee of work, and a date more than 90 days from the date Ms. Ramirez

began working for Defendants. Accordingly, Defendants violated California's paid sick leave law by prohibiting Ms. Ramirez from using accrued paid sick leave when she was eligible to use it under the law.

Civil Penalties

As a result of the foregoing, Defendants are liable for civil penalties as provided for by California law. Consequently, Ms. Ramirez and all other similarly employed persons that worked at Defendants' farms are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

Defendants violated and continue to violate the obligation to pay all minimum wages, to make available legally compliant meal breaks, issue legally compliant wage statements, pay all final wages, pay accrued sick leave and reimburse all necessary expenditures. Ms. Ramirez requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, Ms. Ramirez requests that the agency inform her if it does not intend to investigate these violations so that she may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,
MOSS BOLLINGER, LLP



Ari E. Moss

EXHIBIT 1

Cal Ag Resources, Inc. Payroll Account #3 Bakersfield, CA 93380 LIC. NO. FL-11089

#692840 RAMIREZ, ANA E
Day Pay Type Field Job Hrs Units
WONDERFUL ORCHARDS, LLC 6801 E. LENDO HWY, SHAFTER, CA 93263
02 Reg Hrs POWER HARVEST 3.0000

10/28/19 to 11/03/19 CH# 190378 11/08/19

Rate 13.5000

Total 121.50

Totals by Pay Type:
Reg. Hrs 9.0000 Hrs Units
Totals: 9.0000 0.0000

Rate 13.5000

Total 121.50

This Check Yr-to-Date
Gross Wages 121.50 121.50
Social Sec. 7.29 7.29
Medicare 1.78 1.78
SDI 1.22 1.22
Net Check 110.99 110.99
Total Hours 9.00 9.00

Cal Ag Resources, Inc.
3908 W. Calwell Ave.
Fresno, CA 93277
Fed ID: 26-3299125 S.I. ID: 51-8519-8
Crew # 2048
Sick Pay Plan: SP5 11/02/19-11/01/20
Accrued: 0.00
Available on: 01/31/2020

190378

Cal Ag Resources, Inc. Payroll Account #3 Bakersfield, CA 93380 LIC. NO. FL-11089

#692840 RAMIREZ, ANA E
Day Pay Type Field Job Hrs Units
WONDERFUL ORCHARDS, LLC 6801 E. LENDO HWY, SHAFTER, CA 93263
07 Bonus HARVEST 61.0000 0.7/10
09 Reg. Hrs HARVEST 3.0000
09 Rest & Re HARVEST 3.0000

11/04/19 to 11/10/19 CH# 191227 11/15/19

Rate 25.0000

Total 19.53

Totals by Pay Type:
Bonus 61.0000 Hrs Units
Reg Hrs 3.0000 0.7/10
Rest & Re 3.0000
Totals: 67.0000 0.7/10

Rate 25.0000

Total 19.53

This Check Yr-to-Date
Gross Wages 749.67 871.17
Fed WH 55.30 55.30
Social Sec. 46.48 54.01
Medicare 10.87 12.63
Sate WH 11.02 11.02
SDI 7.49 8.71
Net Check 618.51 729.50
Total Hours 54.00 63.00

Cal Ag Resources, Inc.
3908 W. Calwell Ave.
Visalia, CA 93277
Fed ID: 26-3299125 S.I. ID: 51-8519-8
Crew # 2048
Sick Pay Plan: SP5 11/02/19-11/01/20
Accrued: 2.10
Available on: 01/31/2020

191227

Days Worked: 2