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Superior Court Of California,
Sacramento

04/11/2022

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By _____, Deputy

Case Number:

34-2019-00250841

1 DAVID G. SPIVAK (SBN 179684)
2 david@spivaklaw.com
3 SARA BROWN (SBN 325763)
4 sara@spivaklaw.com
5 THE SPIVAK LAW FIRM
6 8605 Santa Monica Blvd. PMB 42554
7 West Hollywood, CA 90069
8 Telephone (213) 725-9094
9 Facsimile (213) 634-2485

10 Attorneys for Plaintiffs,
11 MARIA VELEZ and CLAUDIA TORREZ,
12 and all others similarly situated

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15
16 **FOR THE COUNTY OF SACRAMENTO**
17 **(UNLIMITED JURISDICTION)**

18 MARIA VELEZ and CLAUDIA TORREZ, on
19 behalf of themselves, and all others similarly
20 situated, and as "aggrieved employees" on
21 behalf of other "aggrieved employees" under
22 the Labor Code Private Attorneys General Act
23 of 2004,

24 *Plaintiff(s),*

25 vs.

26 RENAISSANCE FOOD GROUP, LLC, a
27 Delaware limited liability company; GH
28 FOODS CA LLC, a California limited liability
company; ~~KENNETH J. CATCHOT, an~~
~~individual;~~ CALAVO GROWERS, INC., a
California corporation; ~~G&M HIRE~~
~~ENTERPRISES, LLC doing business as~~
~~ATWORK PERSONNEL SERVICES;~~ and
DOES 1 through 50, inclusive,

Defendant(s).

Case No.: 34-2019-00250841

**~~PROPOSED~~ FIRST AMENDED
COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE
§§ 2698, ET SEQ.**



SPIVAK LAW

Employee Rights Attorneys

Mail:

8605 Santa Monica Blvd., PMB
42554

West Hollywood, CA 90069

(213) 725-9094 Tel

(213) 634-2485 Fax

SpivakLaw.com

Office:

15303 Ventura Blvd., Ste 900
Sherman Oaks, CA 91403

1 Plaintiff Maria Velez (hereafter “Plaintiff Velez” or “Velez”) and Plaintiff Claudia Torrez
2 (hereafter “Plaintiff Torrez” or “Torrez”) (collectively referred to as “Plaintiffs”), on behalf of
3 themselves and all others similarly situated, complain and allege as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this representative action based on alleged violations of the
6 California Labor Code, Industrial Welfare Commission Order No. 8-2001 (hereafter “the Wage
7 Order”) and the Business and Professions Code against defendants RENAISSANCE FOOD
8 GROUP, LLC, a Delaware limited liability company; GH FOODS CA LLC, a California limited
9 liability company; CALAVO GROWERS, INC., a California corporation; and DOES 1 through
10 50, inclusive (collectively “Defendants”).

11 2. As set forth in more detail below, Plaintiffs allege that Defendants are liable to
12 them, The State of California, and the Aggrieved Employees (defined below), for civil penalties
13 and other related relief. These claims are based on Defendants’ failures to: (1) pay all wages for
14 all hours worked, (2) provide all rest and meal periods, (3), timely pay wages upon termination
15 of employment, and (4) provide accurate written wage statements. Accordingly, Plaintiffs now
16 seek to recover civil penalties and related relief through this representative action.

17 **PARTIES**

18 3. Plaintiffs are individuals and residents of the State of California. At all relevant
19 times, Plaintiffs were employees within the meaning of Title 8 California Code of Regulations
20 Section 11080 and aggrieved employees within the meaning of Labor Code Section 2699(c).

21 4. Defendant RENAISSANCE FOOD GROUP, LLC is a limited liability company
22 organized under the laws of Delaware and also a citizen of California. Defendant
23 RENAISSANCE FOOD GROUP, LLC’s corporate headquarters are located in Rancho Cordova
24 in the County of Sacramento, California based on Plaintiffs’ information and belief.

25 5. Defendant GH FOODS CA LLC is a limited liability company organized under
26 the laws of California and therefore a citizen of California and based on Plaintiffs’ information
27 and belief. Defendant GH FOODS CA LLC’s corporate headquarters are located in Rancho
28 Cordova in the County of Sacramento, California based on Plaintiffs’ information and belief.



SPIVAK LAW

Employee Rights Attorneys

Mail:

8605 Santa Monica Blvd., PMB

42554

West Hollywood, CA 90069

(213) 725-9094 Tel

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SpivakLaw.com

Office:

15303 Ventura Blvd., Ste 900

Sherman Oaks, CA 91403

1 6. Defendant CALAVO GROWERS, INC., is a corporation organized under the laws
2 of California and therefore a citizen of California based on Plaintiffs' information and belief.

3 7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
4 participation in the conduct alleged herein, of the Defendants sued as DOES 1-50, inclusive, but
5 are informed and believe and thereon allege that said Defendants are legally responsible for the
6 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
7 Plaintiffs will amend the complaint to allege the true names and capacities of the DOE defendants
8 when ascertained.

9 8. The "Aggrieved Employees" are all individuals the Defendants have employed or
10 otherwise contracted with in California as hourly non-exempt employees, including but not
11 limited to production leads, production workers, quality control technicians, maintenance
12 technicians, machine operators, and similarly situated employees, individuals performing work
13 comparable to the aforementioned, and individuals in similar positions during the period between
14 December 16, 2017 and November 5, 2020, for those employees who worked at the Defendants'
15 Riverside Plant and the period between February 2, 2018 and November 5, 2020, for those
16 employees who worked at Defendants' Sacramento plant.

17 9. Plaintiffs are informed and believe and thereon allege that, at all relevant times
18 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
19 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
20 and scope of such agency or employment, and with the approval and ratification of each of the
21 other Defendants.

22 10. At all relevant times, in perpetrating the acts and omissions alleged herein,
23 defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
24 of a practice which resulted in Defendants not paying Plaintiffs and the other Aggrieved
25 Employees in accordance with applicable California labor laws as alleged herein.

26 11. Plaintiffs are informed and believe and thereon allege that each and every one of
27 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
28 each acting as agents and/or employees, and/or under the direction and control of each of the other



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42554

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Sherman Oaks, CA 91403

defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

PLAINTIFFS' ALLEGATIONS

12. IWC Wage Order 8-2001 ("the Wage Order") applies to "all persons employed in the industries handling products after harvest whether paid on a time, piece rate, commission, or other basis" Wage Order, § 1.

13. Wage Order, § 2(D). At all relevant times during the applicable limitations period, Defendants, Plaintiffs, and all of the Aggrieved Employees were covered by the Wage Order because the Defendants operated, and Plaintiffs, and all of the Aggrieved Employees worked for, one or more establishments operated as a produce processing facility. Accordingly, Plaintiffs and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

14. For the reasons stated below, Plaintiffs allege the following violations of the California Labor Code and the Wage Order 8 on behalf of themselves and the Aggrieved Employees:

a) Defendants failed to provide Plaintiffs and the Aggrieved Employees with all rest breaks and meal periods;

b) Defendants failed to pay Plaintiffs and the Aggrieved Employees one hour's pay for each workday in which they failed to provide them with one or more rest breaks;

c) Defendants failed to pay Plaintiffs and the Aggrieved Employees one hour's pay for each workday in which they failed to provide them with one or more meal periods;

d) Defendants failed to pay Plaintiffs and the Aggrieved Employees minimum wages for all hours worked;

e) Defendants failed to pay Plaintiffs and the Aggrieved Employees overtime wages for all overtime hours worked, including doubletime for work over twelve hours;

f) Defendants failed to provide Plaintiffs and the Aggrieved Employees with accurate wage statements; and

g) Defendants willfully failed to maintain accurate employment records regarding Plaintiffs and the Aggrieved Employees.



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Employee Rights Attorneys

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8605 Santa Monica Blvd., PMB

42554

West Hollywood, CA 90069

(213) 725-9094 Tel

(213) 634-2485 Fax

SpivakLaw.com

Office:

15303 Ventura Blvd., Ste 900

Sherman Oaks, CA 91403

1
2
3 **PLAINTIFF VELEZ'S STATEMENT OF FACTS**

4 15. Defendants hired Plaintiff Velez in or around May 2017 to work for Defendants
5 as a temporary non-exempt hourly Production lead.

6 16. Defendants hired Plaintiff Velez as a fulltime hourly employee on or about
7 September 25, 2017 to work as a production lead in the Fruit Department of its processing facility
8 in Riverside, California.

9 17. During her employment, Defendants continuously employed Plaintiff Velez in
10 California from approximately September 25, 2017 to February 23, 2018, when her employment
11 terminated.

12 18. Throughout Plaintiff Velez's employment period and the time period beginning
13 one year before the date of this letter, Defendants compensated Plaintiff Velez and the Aggrieved
14 Employees with an hourly rate of pay and it paid them their wages on a biweekly basis. Velez
15 started her work shifts at 5:30 a.m. or 6:00 a.m. The work shifts lasted between six to twelve hours
16 or until the Aggrieved Employees completed the day's assigned work.

17 19. Until January of 2018, when Plaintiff Velez and the Aggrieved Employees
18 returned from meal breaks, Defendants regularly required them to wait in a line of fifteen to
19 twenty (15-20) other employees to clock back in to work. Defendants did not pay them for this
20 time and such wait times reduced their meal periods to less than 30 minutes.

21 20. Defendants failed to provide Plaintiff Velez and the Aggrieved Employees with a
22 second uninterrupted 30-minute meal period when they worked in excess of 10 hours in a
23 workday. Plaintiff Velez worked in excess of 10 hours in a workday on multiple occasions but
24 only received one second daily meal period while employed by Defendants.

25 21. Defendants routinely denied Plaintiff Velez and the other Aggrieved Employees
26 an uninterrupted timely second rest period. On average, Defendants instructed its supervisors to
27 permit Plaintiff Velez and the Aggrieved Employees to take a second rest break on only one
28 workday per week. Defendants did not provide Plaintiff Velez and the Aggrieved Employees with
a third rest period after the tenth hour of work as required by law. Although Plaintiff Velez worked



SPIVAK LAW

Employee Rights Attorneys

Mail:

8605 Santa Monica Blvd., PMB

42554

West Hollywood, CA 90069

(213) 725-9094 Tel

(213) 634-2485 Fax

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Office:

15303 Ventura Blvd., Ste 900

Sherman Oaks, CA 91403

1 more than ten hours in a workday on multiple occasions, during the course of her employment
2 with Defendants, Plaintiff Velez never received a timely duty-free third rest period.

3 22. Defendants required Plaintiff Velez and the other Aggrieved Employees to work
4 in excess of eight (8) hours in one workday and forty (40) hours in one workweek without
5 compensating them for such time worked at the overtime rates required by California law.
6 Plaintiff Velez and the Aggrieved Employees incurred uncompensated overtime when Defendants
7 failed to provide them with an uninterrupted 30-minute meal period and when Defendants
8 required them to wait in lines to clock in for work.

9 **PLAINTIFF TORREZ STATEMENT OF FACTS**

10 23. Defendants hired Plaintiff Torrez as a full-time hourly employee on or about May
11 5, 2017 to work as a production lead, a non-supervisory position, in the Fruit Department of its
12 processing facility in Riverside, California. Defendants continuously employed Plaintiff Torrez
13 in California from the time of her hire until on or about January 2, 2020, when her employment
14 terminated.

15 24. Defendants compensated Plaintiff Torrez and the Other Aggrieved Employees
16 with an hourly rate of pay and it paid them their wages on a biweekly basis. Plaintiff Torrez started
17 her work shift at 5:30 a.m. or 6:00 a.m. The length of the work shifts varied from six to twelve
18 hours in a day. On a day-to-day basis, Plaintiff Torrez and the other Aggrieved Employees did
19 not know when their shifts would end. Supervisors assigned Plaintiff Torrez and the other
20 Aggrieved Employees the work that needed to be completed for the day and their work shifts
21 ended upon completion of their assignments.

22 25. When Plaintiff Torrez and the other Aggrieved Employees returned from meal
23 breaks, Defendants compelled them to wait in a line of fifteen to twenty (15-20) other employees
24 to clock back in to work. Plaintiff Torrez and the other Aggrieved Employees regularly waited in
25 line for approximately three minutes before they could clock back in to work. In order to clock
26 back in for work within the 30-minute period Defendants afforded Torrez and the other Aggrieved
27 Employees for meal periods, they would return from work and enter the line at least 3 minutes
28 before the conclusion of their meal period. Defendants did not pay them for this time and such



SPIVAK LAW

Employee Rights Attorneys
Mail:
8605 Santa Monica Blvd., PMB
42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Blvd., Ste 900
Sherman Oaks, CA 91403

1 wait times reduced their meal periods to less than 30 minutes.

2 26. Defendants failed to provide Plaintiff Torrez and the other Aggrieved Employees
3 with a second uninterrupted 30-minute meal period when they worked in excess of 10 hours in a
4 workday. Plaintiff Torrez worked in excess of 10 hours in a workday on multiple occasions. On
5 such occasions, Defendants regularly failed to provide Plaintiff Torrez and the Aggrieved
6 Employees with a second daily meal period.

7 27. Defendants routinely denied Plaintiff Torrez and the other Aggrieved Employees
8 an uninterrupted timely second rest period. On average, Defendants instructed its supervisors to
9 permit Plaintiff Torrez and the Aggrieved Employees to take a second rest break on only one
10 workday per week. On all but a few rare occasions, Defendants did not provide Plaintiff Torrez
11 and the other Aggrieved Employees with a third rest period after the tenth hour of work as required
12 by law. Although Plaintiff Torrez worked more than ten hours in a workday on multiple occasions,
13 during the course of her employment at Defendants, Plaintiff Torrez rarely received a timely duty-
14 free third rest period.

15 28. Defendants required Plaintiff Torrez and the other Aggrieved Employees to work
16 in excess of eight (8) hours in one workday and forty (40) hours in one workweek without
17 compensating them for such time worked at the overtime rates required by California law.
18 Defendants failed to pay one and one half times (1½ x) the hourly rates of pay of Plaintiff Torrez
19 and the other Aggrieved Employees by reducing their recorded work hours by 30 minutes and by
20 failing to pay for times waiting in line to clock in to work.

21 **FIRST AND ONLY CAUSE OF ACTION**

22 **CIVIL PENALTIES**

23 **(Lab. Code §§ 2698, et seq.)**

24 **(By Plaintiffs on behalf of themselves and the other Aggrieved Employees against all**
25 **Defendants)**

26 29. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

27 30. At all relevant times during the applicable limitations period, Plaintiffs and the
28 Aggrieved Employees have been employees of Defendants and entitled to the benefits and
29 protections of California Labor Code and the Wage Order

30 ///



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42554

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Office:
15303 Ventura Blvd., Ste 900
Sherman Oaks, CA 91403

1 **A. FAILURE TO PROVIDE REST BREAKS**

2 31. Labor Code § 1198 states,

3 “The maximum hours of work and the standard conditions of labor fixed
4 by the commission shall be the maximum hours of work and the standard
5 conditions of labor for employees. The employment of any employee for
6 longer hours than those fixed by the order or under conditions of labor
7 prohibited by the order is unlawful.”

8 32. In relevant part, Section 12 of the Wage Order states:

9 Rest Periods:

10 (A) Every employer shall authorize and permit all employees to
11 take rest periods, which insofar as practicable shall be in the middle
12 of each work period. The authorized rest period time shall be based
13 on the total hours worked daily at the rate often (10) minutes net
14 rest time per four (4) hours or major fraction thereof. However, a
15 rest period need not be authorized for employees whose total daily
16 work time is less than three and one-half (3 1/2) hours. Authorized
17 rest period time shall be counted as hours worked for which there
18 shall be no deduction from wages.

19 (B) If an employer fails to provide an employee a rest period in
20 accordance with the applicable provisions of this Order, the
21 employer shall pay the employee one (1) hour of pay at the
22 employee’s regular rate of compensation for each work day that the
23 rest period is not provided.

24 33. “[I]n the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break
25 should fall on either side of the meal break. (*Ibid.*)” *Brinker Rest. Corp. v. Superior Court* (2012)
26 53 Cal. 4th 1004, 1032, 273 P.3d 513, 531.

27 34. In addition, Labor Code Section 226.7 states

28 (b) An employer shall not require an employee to work during a meal
29 or rest or recovery period mandated pursuant to an applicable statute, or
30 applicable regulation, standard, or order of the Industrial Welfare
31 Commission, the Occupational Safety and Health Standards Board, or the
32 Division of Occupational Safety and Health.

33 (c) If an employer fails to provide an employee a meal or rest or
34 recovery period in accordance with a state law, including, but not limited
35 to, an applicable statute or applicable regulation, standard, or order of the
36 Industrial Welfare Commission, the Occupational Safety and Health
37 Standards Board, or the Division of Occupational Safety and Health, the
38 employer shall pay the employee one additional hour of pay at the
39 employee's regular rate of compensation for each workday that the meal or
40 rest or recovery period is not provided.

41 35. Pursuant to the Wage Order, Plaintiffs and the Aggrieved Employees were entitled



SPIVAK LAW

Employee Rights Attorneys

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42554

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SpivakLaw.com

Office:

15303 Ventura Blvd., Ste 900

Sherman Oaks, CA 91403

1 to be provided with net rest breaks of at least ten minutes for each four hour period of work, or
2 major fraction thereof.

3 36. Defendants failed to provide Plaintiffs with all required rest breaks in accordance
4 with the Wage Order. Plaintiffs are informed and believe and thereon allege that, at relevant times
5 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
6 which resulted in Defendants not providing the Aggrieved Employees with all rest breaks required
7 by California law.

8 37. Due to their workload, Defendants often did not provide Plaintiffs and Aggrieved
9 Employees with all their duty-free rest breaks.

10 38. Defendants failed to pay Plaintiffs the additional wages required by California
11 Labor Code § 226.7 for all rest breaks not provided to them. Plaintiffs are informed and believe
12 and thereon allege that, at relevant times within the applicable limitations period, Defendants have
13 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
14 Aggrieved Employees with additional wages for all rest breaks not provided to them as required
15 by California Labor Code § 226.7.

16 **B. FAILURE TO PROVIDE MEAL PERIODS**

17 39. Labor Code § 1198 states,

18 “The maximum hours of work and the standard conditions of labor fixed
19 by the commission shall be the maximum hours of work and the standard
20 conditions of labor for employees. The employment of any employee for
21 longer hours than those fixed by the order or under conditions of labor
22 prohibited by the order is unlawful.”

23 40. In relevant part, Labor Code Section 512 states

24 “An employer may not employ an employee for a work period of more
25 than five hours per day without providing the employee with a meal period
26 of not less than 30 minutes, except that if the total work period per day of
27 the employee is no more than six hours, the meal period may be waived by
28 mutual consent of both the employer and employee. An employer may not
employ an employee for a work period of more than 10 hours per day
without providing the employee with a second meal period of not less than
30 minutes, except that if the total hours worked is no more than 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.”

41. In relevant part, Section 11 of the Wage Order states:

Meal Periods:



SPIVAK LAW

Employee Rights Attorneys

Mail:

8605 Santa Monica Blvd., PMB

42554

West Hollywood, CA 90069

(213) 725-9094 Tel

(213) 634-2485 Fax

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Office:

15303 Ventura Blvd., Ste 900

Sherman Oaks, CA 91403

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

42. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiffs and the Aggrieved Employees were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

43. During the relevant time period, Defendants failed to provide Plaintiffs with all required meal periods in accordance with California Labor Code § 512 and the Wage Order, including, but not limited to, a second 30-minute uninterrupted meal periods on workdays the employee worked more than ten hours in a workday. Plaintiffs are informed and believe and thereon allege that, at relevant times within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with all meal periods required by California Labor Code § 512 and the Wage Order, including, but not limited to, a second 30-minute uninterrupted meal period on



SPIVAK LAW

Employee Rights Attorneys

Mail:

8605 Santa Monica Blvd., PMB

42554

West Hollywood, CA 90069

(213) 725-9094 Tel

(213) 634-2485 Fax

SpivakLaw.com

Office:

15303 Ventura Blvd., Ste 900

Sherman Oaks, CA 91403

workdays they worked more than ten hours in a workday.

44. Due to their workload, Defendants often did not provide Plaintiffs and the Aggrieved Employees with all their duty-free meal periods. Defendants required Plaintiffs and the Aggrieved Employees to stop their lunch break early to stand in line to clock back in to work. This resulted in interrupted and on-duty meal periods.

45. Defendants failed to pay Plaintiffs the additional wages required by California Labor Code § 226.7 for all meal periods not provided to them. Plaintiffs are informed and believe and thereon allege that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with additional wages for all meal periods not provided to them as required by California Labor Code § 226.7.

C. FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED

46. Section 3 of the applicable Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible under the following conditions:

(2) **MANDATORY DAY OFF REQUIREMENT:** An employee may work up to a maximum of 72 hours in any workweek after which the employee shall have a 24-hour period off duty...

47. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of



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Employee Rights Attorneys

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42554

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1 pay of an employee. Nothing in this section requires an employer to combine more
2 than one rate of overtime compensation in order to calculate the amount to be paid
3 to an employee for any hour of overtime work.

4 48. Labor Code section 1197 makes it unlawful for an employer to pay an employee
5 less than the minimum wage required under the applicable Wage Order for all hours worked
6 during a payroll period.

7 49. California Labor Code § 1194 invalidates any agreement between an employer and
8 an employee to work for less than the minimum or overtime wage required under the applicable
9 Wage Order.

10 50. Labor Code section 1198 makes it unlawful for an employer to employ an
11 employee under conditions that violate the Wage Order.

12 51. Employers must compensate non-exempt employees for “off-the-clock” work
13 (before punching in or after punching out on a time clock) if the employers knew or should have
14 known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22
15 Cal.4th 575, 585.

16 52. Plaintiffs are informed and believe that, at all relevant times, Defendants have
17 applied centrally devised policies and practices to them and the Aggrieved Employees with
18 respect to working conditions and compensation arrangements.

19 53. Defendants compensated Plaintiffs and the Aggrieved Employees with an hourly
20 rate of pay on a bi-weekly basis.

21 54. Defendants further deducted at least 30 minutes from Plaintiffs and the Aggrieved
22 Employees’ hours worked in a workday even if they could not take their duty-free meal periods.
23 Defendants also failed to compensate Plaintiffs and the Aggrieved Employees for all hours
24 worked at the correct rates of pay. Defendants compensated Plaintiffs and the Aggrieved
25 Employees fewer overtime hours than they actually worked.

26 55. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
27 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants’
28 failure to compensate the Aggrieved Employees for all hours worked as required by California
law, including, but not limited to overtime wages for all overtime hours they worked.



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1 56. As a result of Defendants' unlawful conduct, Plaintiffs and the other Aggrieved
2 Employees have suffered damages in an amount, subject to proof, to the extent they were not paid
3 the full amount of wages earned during each pay period during the applicable limitations period.

4 57. Additionally, with respect to this cause of action, on behalf of themselves and the
5 Aggrieved Employees, Plaintiffs pray for an award of reasonable costs and attorneys' fees,
6 including interest thereon, as permitted by law, all in amounts subject to proof.

7 **D. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
8 **STATEMENTS**

9 58. Pursuant to California Labor Code § 226(a), Plaintiffs and the Aggrieved
10 Employees were entitled to receive, semimonthly or at the time of each payment of wages, an
11 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
12 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
13 each hourly rate by the employee.

14 59. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
15 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
16 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
17 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
18 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
19 is entitled to an award of costs and reasonable attorney's fees.

20 60. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
21 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
22 injury if the employer fails to provide accurate and complete information as required by California
23 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
24 statement alone one or more of the following:

25 A. The amount of the gross wages or net wages paid to the employee during
26 the pay period or any of the other information required to be provided on the itemized wage
27 statement pursuant to California Labor Code § 226(a);

28 B. Which deductions the employer made from gross wages to determine the



SPIVAK LAW

Employee Rights Attorneys

Mail:

8605 Santa Monica Blvd., PMB

42554

West Hollywood, CA 90069

(213) 725-9094 Tel

(213) 634-2485 Fax

SpivakLaw.com

Office:

15303 Ventura Blvd., Ste 900

Sherman Oaks, CA 91403

1 net wages paid to the employee during the pay period;

2 C. The name and address of the employer and, if the employer is a farm labor
3 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
4 and address of the legal entity that secured the services of the employer during the pay period;
5 and

6 D. The name of the employee and only the last four digits of his or her social
7 security number or an employee identification number other than a social security number.

8 61. "Promptly and easily determine," as stated in California Labor Code § 226(e),
9 means a reasonable person would be able to readily ascertain the information without reference
10 to other documents or information.

11 62. As alleged herein, Defendants failed to provide Plaintiffs and the Aggrieved
12 Employees all wages owed, including but not limited to, minimum and overtime wages and all
13 premium wages for unprovided rest and/or meal periods. As a result, Defendants have failed to
14 properly and accurately itemize each employee's gross wages earned, net wages earned, the total
15 hours worked, the corresponding number of hours worked by employees and other requirements
16 of California Labor Code § 226. As a result, Defendants have violated California Labor Code §
17 226.

18 63. Defendants' failure to provide Plaintiffs and the Aggrieved Employees with
19 accurate wage statements was knowing and intentional. Defendants had the ability to provide
20 Plaintiffs and the Aggrieved Employees with accurate wage statements but intentionally provided
21 wage statements that Defendants knew were not accurate.

22 64. As a result of being provided with inaccurate wage statements by Defendants,
23 Plaintiffs and the Aggrieved Employees have suffered injury. Their legal rights to receive accurate
24 wage statements were violated and they were misled about the amount of wages they had actually
25 earned and were owed. In addition, the absence of accurate information on their wage statements
26 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
27 and mathematical computations to determine the amounts of wages owed, has caused difficulty
28 and expense in attempting to reconstruct time and pay records and/or has led to the submission of



SPIVAK LAW

Employee Rights Attorneys
Mail:
8605 Santa Monica Blvd., PMB
42554

West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Blvd., Ste 900
Sherman Oaks, CA 91403

1 inaccurate information about wages to state and federal government agencies. Further, Plaintiffs
2 and the Aggrieved Employees were not able to ascertain from the wage statements whether
3 Defendants complied with their obligations under California Labor Code § 226(a).

4 65. Pursuant to California Labor Code § 226(e), Plaintiffs and the Aggrieved
5 Employees are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
6 for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one
7 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
8 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Aggrieved Employee,
9 and are also entitled to an award of costs and reasonable attorneys' fees.

10 **E. UNTIMELY WAGES DURING EMPLOYMENT**

11 66. Labor Code § 204 states:

12 (a) All wages, other than those mentioned in Section 201,
13 201.3, 202, 204.1, or 204.2, earned by any person in any
14 employment are due and payable twice during each
15 calendar month, on days designated in advance by the
16 employer as the regular paydays. Labor performed
17 between the 1st and 15th days, inclusive, of any calendar
18 month shall be paid for between the 16th and the 26th day
19 of the month during which the labor was performed, and
20 labor performed between the 16th and the last day,
21 inclusive, of any calendar month, shall be paid for
22 between the 1st and 10th day of the following month. ...

23 (b) (1) Notwithstanding any other provision of this
24 section, all wages earned for labor in excess of the normal
25 work period shall be paid no later than the payday for the
26 next regular payroll period.

27 (2) An employer is in compliance with the
28 requirements of subdivision (a) of Section 226
relating to total hours worked by the employee, if
hours worked in excess of the normal work period
during the current pay period are itemized as
corrections on the paystub for the next regular pay
period. Any corrections set out in a subsequently
issued paystub shall state the inclusive dates of
the pay period for which the employer is
correcting its initial report of hours worked.

(c) However, when employees are covered by a collective
bargaining agreement that provides different pay
arrangements, those arrangements shall apply to the
covered employees.

(d) The requirements of this section shall be deemed satisfied
by the payment of wages for weekly, biweekly, or



SPIVAK LAW

Employee Rights Attorneys
Mail:

8605 Santa Monica Blvd., PMB
42554

West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Blvd., Ste 900
Sherman Oaks, CA 91403

semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

67. Defendants failed to compensate Plaintiffs and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiffs and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Defendants also failed to provide Plaintiffs and the Aggrieved Employees with all premium wages on workdays they failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

F. UNTIMELY FINAL WAGES

68. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

69. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

70. By failing to pay earned minimum, overtime, and premium wages to Plaintiffs and the Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

71. Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

72. Plaintiffs are informed and believe that Defendants' failures to timely pay Plaintiffs and the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.



SPIVAK LAW

Employee Rights Attorneys

Mail:

8605 Santa Monica Blvd., PMB

42554

West Hollywood, CA 90069

(213) 725-9094 Tel

(213) 634-2485 Fax

SpivakLaw.com

Office:

15303 Ventura Blvd., Ste 900

Sherman Oaks, CA 91403

G. **FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

73. Labor Code § 1174 states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

74. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

75. Section 7 of the Wage Order states:

(A) Every employer shall keep accurate information with respect to each employee, including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which, operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

...



SPIVAK LAW

Employee Rights Attorneys

Mail:

8605 Santa Monica Blvd., PMB

42554

West Hollywood, CA 90069

(213) 725-9094 Tel

(213) 634-2485 Fax

SpivakLaw.com

Office:

15303 Ventura Blvd., Ste 900
Sherman Oaks, CA 91403

(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

76. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

77. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiffs and the Aggrieved Employees.

78. Accordingly, Plaintiffs seek an award of civil penalties against the Defendants on behalf of themselves and all of the other Aggrieved Employees as follows: (1) \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

H. CIVIL PENALTIES SOUGHT

79. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiffs on such intervals for all wages earned and all hours worked. On information and belief, Plaintiffs allege that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

80. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and 1198, and related Labor Code statutes.

81. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

82. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the Aggrieved



SPIVAK LAW

Employee Rights Attorneys

Mail:

8605 Santa Monica Blvd., PMB

42554

West Hollywood, CA 90069

(213) 725-9094 Tel

(213) 634-2485 Fax

SpivakLaw.com

Office:

15303 Ventura Blvd., Ste 900

Sherman Oaks, CA 91403

1 Employees are entitled to recover civil penalties for each of the Defendants' violations of
2 California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and
3 1198, and related Labor Code statutes during the applicable limitations period in the following
4 amounts:

5 A. For violations of California Labor Code § 204, one hundred dollars
6 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
7 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully
8 withheld from each aggrieved employee for each subsequent, willful or intentional violation
9 (penalty amounts established by California Labor Code § 210).

10 B. For violations of California Labor Code § 221, one hundred dollars (\$100)
11 for each Aggrieved Employee for each initial violation and two hundred dollars (\$200) for each
12 Aggrieved Employee for each subsequent violation, or any willful or intentional violation
13 (penalty amounts established by California Labor Code § 225.5).

14 C. For violations of California Labor Code § 226(a), two hundred fifty dollars
15 (\$250.00) for each aggrieved employee for initial violation and one thousand dollars (\$1,000.00)
16 for each aggrieved employee for each subsequent violation (penalty amounts established by
17 California Labor Code § 226.3).

18 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
19 (\$50.00) for each aggrieved employee for initial violation and one hundred dollars (\$100.00) for
20 each aggrieved employee for each subsequent violation, per pay period (penalty amounts
21 established by California Labor Code § 558).

22 E. For violations of California Labor Code § 1197, one hundred dollars
23 (\$100.00) for each aggrieved employee for each initial and intentional violation and two hundred
24 fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation, per pay period
25 (regardless of whether the initial violations were intentionally committed), (penalty amounts
26 established by California Labor Code § 1197.1).

27 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
28 and 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each



SPIVAK LAW

Employee Rights Attorneys

Mail:

8605 Santa Monica Blvd., PMB

42554

West Hollywood, CA 90069

(213) 725-9094 Tel

(213) 634-2485 Fax

SpivakLaw.com

Office:

15303 Ventura Blvd., Ste 900

Sherman Oaks, CA 91403

1 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
2 for each subsequent violation (penalty amounts established by California Labor Code §
3 2699(f)(2)).

4 **I. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

5 83. Plaintiffs have complied with the procedures for bringing suit specified in
6 California Labor Code § 2699.3. By letter dated December 14, 2018, Plaintiff Velez filed written
7 notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written
8 notice by certified mail to Defendants of the specific provisions of the California Labor Code
9 alleged to have been violated, including the facts and theories to support the alleged violations. A
10 true and correct copy of the notice to the LWDA dated December 14, 2018 is attached as **Exhibit**
11 **A**. Plaintiff Velez accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA
12 has failed to take action in response within 65 calendar days of the date of Plaintiff Velez’s notice,
13 but Plaintiff Velez anticipates that the LWDA will provide written notice to Plaintiff Velez
14 informing her that it does not intend to investigate these allegations.

15 84. By letter dated July 29, 2020, Plaintiff Torrez filed written notice online with the
16 LWDA and gave written notice by certified mail to Defendants of the specific provisions of the
17 California Labor Code alleged to have been violated, including the facts and theories to support
18 the alleged violations. A true and correct copy of the notice to the LWDA dated July 29, 2020, is
19 attached as **Exhibit B**. Plaintiff Torrez accompanied her LWDA notice with a fee in the amount
20 of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of
21 Plaintiff Torrez’s notice, but Plaintiff Torrez anticipates that the LWDA will provide written
22 notice to Plaintiff Torrez informing her that it does not intend to investigate these allegations.

23 85. Pursuant to California Labor Code § 2699(g), Plaintiffs and the Aggrieved
24 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
25 connection with their claims for civil penalties.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs, on behalf of themselves and the Aggrieved Employees, pray
28 for relief and judgment against Defendants as follows:



SPIVAK LAW

Employee Rights Attorneys
Mail:
8605 Santa Monica Blvd., PMB
42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Blvd., Ste 900
Sherman Oaks, CA 91403

- 1 A. Civil penalties;
2 B. Costs of suit;
3 C. Reasonable attorneys' fees; and
4 D. Such other relief as the Court deems just and proper.

5 Respectfully submitted,

6 THE SPIVAK LAW FIRM

7
8 Dated: March 28, 2022

By 
9 DAVID SPIVAK
10 SARA BROWN
11 Attorney for Plaintiffs, MARIA VELEZ and
12 CLAUDIA TORREZ, and all others similarly
13 situated
14
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26 **SPIVAK LAW**

27 Employee Rights Attorneys

28 Mail:
8605 Santa Monica Blvd., PMB
42554

West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Blvd., Ste 900
Sherman Oaks, CA 91403

EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 14, 2018

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Maria Velez / Renaissance Food Group, LLC et al.*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Maria Velez (hereafter “Velez”) provides notice on behalf of herself and all individuals currently and formerly employed in California as hourly non-exempt employees, including but not limited to production leads, production workers, quality control technicians, maintenance technicians, machine operators, and similarly situated employees (hereafter “Aggrieved Employees”) by Renaissance Food Group, LLC, a Delaware limited liability company, GH Foods CA LLC, a California limited liability company, Kenneth J. Catchot, an individual, and Calavo Growers, Inc., a California corporation (hereafter collectively “RFG”) of violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and 1198.

At all relevant times, RFG has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Velez and the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 8-2001 (hereafter “the Wage Order”), paragraph 2.E, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

16530 VENTURA BLVD., STE 312
ENCINO, CA 91436

TEL (818) 582-3086
FAX (818) 582-2561

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Statement of Facts

RFG hired Velez as a full time hourly employee on or about September 25, 2017 to work as a production lead, a non-supervisory position, in the Fruit Department of its processing facility in Riverside, California. RFG continuously employed Velez in California from approximately September 25, 2017 to February 23, 2018, when her employment terminated.

RFG compensated Velez and the Aggrieved Employees with an hourly rate of pay and it paid them their wages on a biweekly basis. Velez started her work shift at 5:30 a.m. or 6:00 a.m. The length of the work shifts varied from six to twelve hours in a day. On a day to day basis, Velez and the other Aggrieved Employees did not know when their shifts would end. Supervisors assigned Velez and the Aggrieved Employees the work that needed to be completed for the day and their work shifts ended upon completion of their assignments.

Until January of 2018, when Velez and the Aggrieved Employees returned from meal breaks, RFG regularly required them to wait in a line of fifteen to twenty (15-20) other employees to clock back in to work. RFG did not pay them for this time and such wait times reduced their meal periods to less than 30 minutes.

RFG failed to provide Velez and the Aggrieved Employees with a second uninterrupted 30-minute meal period when they worked in excess of 10 hours in a workday. Velez worked in excess of 10 hours in a workday on multiple occasions. RFG failed to provide all but one second daily meal period.

RFG routinely denied Velez and the other Aggrieved Employees an uninterrupted timely second rest period. On average, RFG instructed its supervisors to permit Velez and the Aggrieved Employees to take a second rest break on only one workday per week. RFG did not provide Velez and the Aggrieved Employees with a third rest period after the tenth hour of work as required by law. Although Velez worked more than ten hours in a workday on

multiple occasions, during the course of her employment at RFG, Velez never received a timely duty-free third rest period.

RFG required Velez and the other Aggrieved Employees to work in excess of eight (8) hours in one workday and forty (40) hours in one workweek without compensating them for such time worked at the overtime rates required by California law. RFG failed to pay one and one half times (1 ½ x) the hourly rates of pay of Velez and the Aggrieved Employees by reducing their recorded work hours by 30 minutes and by failing to pay for times waiting in line to clock in to work.

For the reasons herein, Velez alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and the other Aggrieved Employees:

- a) RFG failed to compensate Velez and the Aggrieved Employees all their wages earned, including but not limited to, minimum and overtime wages;
- b) RFG unlawfully deducted the wages Velez and the Aggrieved Employees earned, including but not limited to, minimum and overtime wages;
- c) RFG failed to provide Velez and the Aggrieved Employees with all meal periods required by law;
- d) RFG failed to provide Velez and the other Aggrieved Employees with rest breaks as required by law;
- e) RFG failed to compensate Velez and the other Aggrieved Employees at one hour's pay on days when RFG failed to provide them with one or more meal periods in a workday;

- f) RFG failed to compensate Velez and the other Aggrieved Employees at one hour's pay on days when RFG failed to provide them with one or more rest periods in a workday;
- g) RFG failed to provide Velez and the other Aggrieved Employees with accurate and complete wage statements; and
- h) RFG willfully and knowingly failed to pay Velez and the Aggrieved Employees during, and upon termination of, employment, all accrued compensation, including compensation for missed meal periods and work off the clock.

Accordingly, Velez now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on RFG's alleged violations of the California Labor Code and the Wage Order.

Wage Order 8

Wage Order 8 applies to "all persons employed in the industries handling products **after harvest** whether paid on a time, piece rate, commission, or other basis." (emphasis added). At all relevant times during the applicable limitations period, Velez was employed by RFG as a production lead. Accordingly, Velez and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Pay All Wages Earned for All Hours Worked **(Lab. Code §§ 510, 558.1, 1194, 1197, and 1198)**

At all relevant times, Velez and the other Aggrieved Employees have been non-exempt employees of RFG and entitled to the benefits and protections of California Labor Code sections 510, 558.1, 1194, 1197, 1198, and the Wage Order.

Section 2 of the Wage Order defines “hours worked” 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.”

Section 3 of the Wage Order states:

(1) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school: Such employees shall not be employed more than eight (8) hours in any one workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. ...

...

(3) Overtime hours shall be compensated at:

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive

knowledge that employees are working.

Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Labor Code §558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §203, 226, 226.7, 1193.6, 1194, or 2802, may be held

liable as the employer for such violation.

- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.”

At all relevant times herein, RFG employed Catchot as a Manager and Catchot acted as an “owner,” “managing agent,” and “officer.” Catchot directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, or working conditions of Velez and the other Aggrieved Employees and caused the violations to the Labor Code and the Wage Order described above.

In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

At all relevant times during the applicable limitations period, as described above, RFG knowingly failed to compensate Velez and the Aggrieved Employees for all hours worked, including, but not limited to minimum and overtime wages for all hours in excess of 40 in a week and all in excess of eight in a day.

Accordingly, Velez seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 510 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 510 occurred in addition to an amount sufficient to

recover underpaid wages (penalties set by California Labor Code § 558);

2. \$100 for each Aggrieved Employee per pay period in which initial violations of § 1194 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2)).
3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages and liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by California Labor Code section 1197.1); and
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Unlawful Collection of Wages
(Lab. Code § 221)

In relevant part, California labor Code § 221 states, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

RFG illegally and arbitrarily deducts several minutes from the records of Velez and the other Aggrieved Employees of their daily time worked and reports less hours than their actual hours worked on their wage statements. As a result,

RFG collected and received part of Velez' and the other Aggrieved Employees' wages in violation of California Labor Code § 221.

Accordingly, Velez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 221 (if found to be neither willful nor intentional) and \$200 for each Aggrieved Employee, plus 25 percent of the amount unlawfully withheld, for each initial violation of California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code § 221 (regardless of whether they are found to be either willful or intentional) (penalties set by California Labor Code § 225.5).

Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512 and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees

whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of not more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee.

(B) An employer may not employ and employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including but not limited to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

RFG has intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Velez and the other Aggrieved Employees as required by law. As a result, RFG violated California Labor Code §§ 226.7, 512 and 1198.

Accordingly, Velez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 226.7 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 226.7 occurred (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 512 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 512 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 1198 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1198 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,

- 7) 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,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As alleged herein, RFG failed to provide Velez and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and unpaid wages for uncompensated work such as standing in lines to clock in to work. As a result, RFG failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. As a result, RFG has violated California Labor Code § 226.

Accordingly, Velez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failures to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following

month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As alleged herein, RFG failed to provide Velez and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided. RFG failed to compensate Velez and the Aggrieved Employees for all hours worked on workdays it modified their time records to falsely state that 30-minute uninterrupted meal periods took place in compliance with California laws. RFG failed to pay Velez and the other Aggrieved Employees for time spent waiting in line to clock in to work. As a result, RFG failed to timely pay Velez and the other Aggrieved Employees all earned minimum, overtime, and premium wages within the time periods set by California Labor Code § 204. As a result, RFG has violated California Labor Code § 204.

Accordingly, Velez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 204 occurred, and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, per pay period in which subsequent violations of § 204 occurred (penalties set by Labor Code § 210).

Failure to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the

date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

RFG failed to provide Velez and the Aggrieved Employees with meal and rest periods in compliance with California laws. They also failed to provide Velez and the other Aggrieved Employees with premium wages on workdays they failed to make one or more meal or rest periods available. RFG failed to compensate Velez and the other Aggrieved Employees for all hours worked on days they modified their time records to falsely state that meal and rest periods took place in compliance with California laws. RFG failed to pay Velez and the other Aggrieved Employees for time spent waiting in line to clock in after a meal period. By willfully failing to pay wages to Velez and the other Aggrieved Employees as set forth above, at the time of termination of employment, RFG is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the other Aggrieved Employees, Velez seeks civil penalties from RFG as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

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///

2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Maria Velez

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Renaissance Food Group, LLC
c/o James S. Catchot
Agent for Service of Process
11020 White Rock Rd., Ste. 100
Rancho Cordova, CA 95670

Calavo Growers, Inc.
c/o James Snyder, CAO
1141A Cummings Road
Santa Paula, CA 93060

Calavo Growers, Inc.
c/o National Registered Agents, Inc. (C1941323),
Agent for Service of Process
111 Eighth Ave. 13th Floor
New York, NY 10011

GH Foods CA, LLC
c/o James E. Gibson
Agent for Service of Process
14559 Guadalupe Drive
Rancho Murieta, CA 95683

Kenneth J. Catchot
14151 Indio Drive
Sloughhouse, CA 95683

EXHIBIT B



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

July 29, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Claudia Torrez / Renaissance Food Group, LLC, et al.*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Claudia Torrez (hereafter “Torrez”) provides notice on behalf of herself and all individuals currently and formerly employed in California as hourly non-exempt employees, including but not limited to production leads, production workers, quality control technicians, maintenance technicians, machine operators, and similarly situated employees (hereafter “Aggrieved Employees”) by Renaissance Food Group, LLC, a Delaware limited liability company, GH Foods CA LLC, a California limited liability company, and Calavo Growers, Inc., a California corporation (hereafter collectively “RFG”) of violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and 1198.

At all relevant times, RFG has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Torrez and the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 8-2001 (hereafter “the Wage Order”), paragraph 2.E, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

TEL (818) 582-3086
FAX (818) 582-2561

SPIVAKLAW.COM

Statement of Facts

RFG hired Torrez as a full time hourly employee on or about May 5, 2017 to work as a production lead, a non-supervisory position, in the Fruit Department of its processing facility in Riverside, California. RFG continuously employed Torrez in California from the time of her hire until on or about January 2, 2020, when her employment terminated.

RFG compensated Torrez and the Aggrieved Employees with an hourly rate of pay and it paid them their wages on a biweekly basis. Torrez started her work shift at 5:30 a.m. or 6:00 a.m. The length of the work shifts varied from six to twelve hours in a day. On a day to day basis, Torrez and the other Aggrieved Employees did not know when their shifts would end. Supervisors assigned Torrez and the Aggrieved Employees the work that needed to be completed for the day and their work shifts ended upon completion of their assignments.

When Torrez and the Aggrieved Employees returned from meal breaks, RFG compelled them to wait in a line of fifteen to twenty (15-20) other employees to clock back in to work. Torrez and the Aggrieved Employees regularly waited in line for approximately three minutes before they could clock back in to work. In order to clock back in for work within the 30-minute period RFG afforded Torrez and the Aggrieved Employees for meal periods, they would return from work and enter the line at least 3 minutes before the conclusion of their meal period. RFG did not pay them for this time and such wait times reduced their meal periods to less than 30 minutes.

RFG failed to provide Torrez and the Aggrieved Employees with a second uninterrupted 30-minute meal period when they worked in excess of 10 hours in a workday. Torrez worked in excess of 10 hours in a workday on multiple occasions. On such occasions, RFG regularly failed to provide Torrez and the Aggrieved Employees with a second daily meal period.

RFG routinely denied Torrez and the other Aggrieved Employees an uninterrupted timely second rest period. On average, RFG instructed its supervisors to permit Torrez and the Aggrieved Employees to take a second rest break on only one workday per week. On all but a few rare occasions, RFG

did not provide Torrez and the Aggrieved Employees with a third rest period after the tenth hour of work as required by law. Although Torrez worked more than ten hours in a workday on multiple occasions, during the course of her employment at RFG, Torrez rarely received a timely duty-free third rest period.

RFG required Torrez and the other Aggrieved Employees to work in excess of eight (8) hours in one workday and forty (40) hours in one workweek without compensating them for such time worked at the overtime rates required by California law. RFG failed to pay one and one half times (1 ½ x) the hourly rates of pay of Torrez and the Aggrieved Employees by reducing their recorded work hours by 30 minutes and by failing to pay for times waiting in line to clock in to work.

For the reasons herein, Torrez alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and the other Aggrieved Employees:

- a) RFG failed to compensate Torrez and the Aggrieved Employees all their wages earned, including but not limited to, minimum and overtime wages;
- b) RFG unlawfully deducted the wages Torrez and the Aggrieved Employees earned, including but not limited to, minimum and overtime wages;
- c) RFG failed to provide Torrez and the Aggrieved Employees with all meal periods required by law;
- d) RFG failed to provide Torrez and the other Aggrieved Employees with rest breaks as required by law;
- e) RFG failed to compensate Torrez and the other Aggrieved Employees at one hour's pay on days when RFG failed to provide them with one or more meal periods in a workday;

- f) RFG failed to compensate Torrez and the other Aggrieved Employees at one hour's pay on days when RFG failed to provide them with one or more rest periods in a workday;
- g) RFG failed to provide Torrez and the other Aggrieved Employees with accurate and complete wage statements; and
- h) RFG willfully and knowingly failed to pay Torrez and the Aggrieved Employees during, and upon termination of, employment, all accrued compensation, including compensation for missed meal periods and work off the clock.

Accordingly, Torrez now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on RFG's alleged violations of the California Labor Code and the Wage Order.

Wage Order 8

Wage Order 8 applies to "all persons employed in the industries handling products after harvest whether paid on a time, piece rate, commission, or other basis." (emphasis added). At all relevant times during the applicable limitations period, Torrez was employed by RFG as a production lead. Accordingly, Torrez and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Pay All Wages Earned for All Hours Worked **(Lab. Code §§ 510, 558.1, 1194, 1197, and 1198)**

At all relevant times, Torrez and the other Aggrieved Employees have been non-exempt employees of RFG and entitled to the benefits and protections of California Labor Code sections 510, 558.1, 1194, 1197, 1198, and the Wage Order.

Section 2 of the Wage Order defines "hours worked" 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.”

Section 3 of the Wage Order states:

(1) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school: Such employees shall not be employed more than eight (8) hours in any one workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. ...

...

(3) Overtime hours shall be compensated at:

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

At all relevant times during the applicable limitations period, as described above, RFG knowingly failed to compensate Torrez and the Aggrieved Employees for all hours worked, including, but not limited to minimum and

overtime wages for all hours in excess of 40 in a week and all in excess of eight in a day.

Accordingly, Torrez seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 510 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 510 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee per pay period in which initial violations of § 1194 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2)).
3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages and liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by California Labor Code section 1197.1); and
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Unlawful Collection of Wages
(Lab. Code § 221)

In relevant part, California labor Code § 221 states, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

RFG illegally and arbitrarily deducts several minutes from the records of Torrez and the other Aggrieved Employees of their daily time worked and reports less hours than their actual hours worked on their wage statements. As a result, RFG collected and received part of Torrez’ and the other Aggrieved Employees’ wages in violation of California Labor Code § 221.

Accordingly, Torrez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 221 (if found to be neither willful nor intentional) and \$200 for each Aggrieved Employee, plus 25 percent of the amount unlawfully withheld, for each initial violation of California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code § 221 (regardless of whether they are found to be either willful or intentional) (penalties set by California Labor Code § 225.5).

Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512 and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of not more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not

more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including but not limited to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular

rate of compensation for each workday that the meal or rest or recovery period is not provided.

RFG has intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Torrez and the other Aggrieved Employees as required by law. As a result, RFG violated California Labor Code §§ 226.7, 512 and 1198.

Accordingly, Torrez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 226.7 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 226.7 occurred (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 512 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 512 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 1198 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1198 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee,

- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) 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,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As alleged herein, RFG failed to provide Torrez and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and unpaid wages for uncompensated work such as standing in lines to clock in to work. As a result, RFG failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. As a result, RFG has violated California Labor Code § 226.

Accordingly, Torrez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failures to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the

1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As alleged herein, RFG failed to provide Torrez and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided. RFG failed to compensate Torrez and the Aggrieved Employees for all hours worked on workdays it modified their time records to falsely state that 30-minute uninterrupted meal periods took place in compliance with California laws. RFG failed to pay Torrez and the other Aggrieved Employees for time spent waiting in line to clock in to work. As a result, RFG failed to timely pay Torrez and the other Aggrieved Employees all earned minimum, overtime, and premium wages within the time periods set by California Labor Code § 204. As a result, RFG has violated California Labor Code § 204.

Accordingly, Torrez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 204 occurred, and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, per pay period in which subsequent violations of § 204 occurred (penalties set by Labor Code § 210).

Failure to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other

provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

RFG failed to provide Torrez and the Aggrieved Employees with meal and rest periods in compliance with California laws. They also failed to provide Torrez and the other Aggrieved Employees with premium wages on workdays they failed to make one or more meal or rest periods available. RFG failed to compensate Torrez and the other Aggrieved Employees for all hours worked on days they modified their time records to falsely state that meal and rest periods took place in compliance with California laws. RFG failed to pay Torrez and the other Aggrieved Employees for time spent waiting in line to clock in after a meal period. By willfully failing to pay wages to Torrez and the other Aggrieved Employees as set forth above, at the time of termination of employment, RFG is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the other Aggrieved Employees, Torrez seeks civil penalties from RFG as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period

in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
david@spivaklaw.com
cc: Claudia Torrez

Renaissance Food Group, LLC
c/o Alden Parker, Esq.
Fisher & Phillips, LLP
621 Capital Mall, Suite 1400
Sacramento, CA 95814
aparker@fisherphillips.com

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Calavo Growers, Inc.
c/o Alden Parker, Esq.
Fisher & Phillips, LLP
621 Capital Mall, Suite 1400
Sacramento, CA 95814
aparker@fisherphillips.com

GH Foods CA, LLC
c/o Alden Parker, Esq.
Fisher & Phillips, LLP
621 Capital Mall, Suite 1400
Sacramento, CA 95814
aparker@fisherphillips.com

State of California,
County of Los Angeles

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

Alden J. Parker, Esq.
Drew Tate, Esq.
Fisher & Phillips LLP
621 Capitol Mall, Suite 1400
Sacramento, CA 95814
aparker@fisherphillips.com
dtate@fisherphillips.com
lysmith@fisherphillips.com
vrathke@fisherphillips.com

EXECUTED on Monday, April 11, 2022, at Los Angeles, California.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

BRECK OYAMA