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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MERCED

ADRIAN ARRILLAGA, an individual;
ADRIAN ARRILLAGA HERNANDEZ, an
individual; GRISELDA HERNANDEZ, an
individual; ROBERTO PEREZ, an
individual; as individuals, and on behalf of
other members of the general public
similarly situated and other aggrieved
employees,

Plaintiffs,

v.

MININGER FARMS, INC., a California
corporation; NATHAN WADE
MININGER; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 20CV-02435

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES, INJUNCTIVE RELIEF,
AND CIVIL PENALTIES FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Compliant Meal Periods;
4. Failure to Provide Compliant Rest Periods;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due Upon Separation of Employment;
7. Failure to Indemnify Employees for Necessary Expenditures;
8. Unfair Competition;
9. Failure to Provide Employment Records; and
10. Violation of the Private Attorneys General Act ("PAGA"), Cal. Labor Code Sections 2698, et seq.

JURY TRIAL DEMANDED

1 Plaintiffs ADRIAN ARRILLAGA, ADRIAN ARRILLAGA HERNANDEZ, GRISELDA
2 HERNANDEZ, and ROBERTO PEREZ (“Plaintiffs”), as individuals, and on behalf of other members
3 of the general public similarly situated, allege and complain as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this class and representative action for wage and hour claims on behalf
6 of themselves, and all other similarly situated non-exempt hourly employees performing agricultural
7 occupations currently or formerly employed in California by MININGER FARMS, INC., a California
8 Corporation, NATHAN WADE MININGER and DOES 1 through 10, inclusive, (hereinafter,
9 “Defendants”).

10 2. At all times relevant to this First Amended Complaint (“FAC”), Defendants operated,
11 leased, and/or owned land for the purpose of producing sweet potatoes at various farm locations
12 throughout California and then sell them in the interstate commercial market. Moreover, at all times
13 relevant to this FAC, Defendants are and were employers covered by the California Labor Code and
14 Industrial Welfare Commission Wage Order No. 14, Regulating Wages, Hours, and Working
15 Conditions in Agricultural Occupations (hereinafter “Wage Order No. 14”).

16 3. Beginning at least four (4) years prior to the filing of this action and continuing through
17 the present (the “Class Period”), Defendants have engaged in a systematic practice of unlawful wage
18 theft, including but not limited to: (i) altering or condoning the alteration of time records to avoid
19 paying Plaintiffs and other similarly situated hourly employees for time worked and for overtime
20 premiums earned; (ii) failing to pay the appropriate overtime premium rate for overtime hours worked;
21 (iii) requiring, suffering, or permitting Plaintiffs and other similarly situated hourly employees to work
22 off the clock without compensation including time they spent performing pre-shift and post-shift
23 duties; (iv) failing to pay legally required premium wages when Defendants failed to provide Plaintiffs
24 and other similarly situated hourly employees with complete, timely, and uninterrupted meal and rest
25 periods, as required by California law; (v) failing to furnish accurate wage statements; (vi) requiring
26 Plaintiffs and other similarly situated hourly employees to incur necessary expenses without
27 reimbursement; and (vii) failing to pay all wages upon separation of employment, among other
28 violations of the California Labor Code and IWC Wage Order No. 14-2001.

2.

5. At all times relevant to this FAC, Defendants' violations of the California Labor Code and Wage Order No. 14-2001 were willful, deliberate, and aimed at maximizing profit at the expense of its employees' rights. Moreover, Defendants, as the employers of Plaintiffs and all similarly situated hourly employees, were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions, as alleged in this FAC.

6. In view of Defendants' systematic practice of unlawful wage theft, Plaintiffs, on behalf of themselves, as individuals, and on behalf of all similarly situated current and former hourly employees and other aggrieved individuals performing agricultural occupations for Defendants during the applicable Class Period, seek compensatory, statutory, declaratory, and injunctive relief to compensate them and their fellow workers for the unpaid and underpaid wages that Defendants have stolen from them and to protect current and future employees from being subjected to similar wage theft and other unlawful working conditions, as well as civil penalties to punish and deter future violations of California's wage and hour laws.

7. This FAC is brought pursuant to California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs, on behalf of themselves and other similarly situated non-exempt hourly employees performing agricultural occupations, exceed the minimal jurisdiction limits of the Superior Court of California and will be established according to proof at trial.

8. This Court has original jurisdiction over this FAC pursuant to California Constitution, Article VI, Section 10, which grants the Superior Court of California “original jurisdiction in all other causes” except those causes given by statute to other courts. The statutes under which this FAC is brought do not specify any other basis for jurisdiction.

9. On information and belief, this Court has personal jurisdiction over Defendants in this FAC because each party is either a citizen of California, has sufficient minimum contacts in California,

1 or otherwise intentionally avails itself of the California market so as to render the exercise of
2 jurisdiction over it by California courts consistent with traditional notions of fair play and substantial
3 justice. Further, no federal question is at issue because the Plaintiffs' claims arise under and are based
4 solely on California law.

5 10. Venue is proper in the County of Merced pursuant to California Code of Civil
6 Procedure section 395.5. Plaintiffs were employed and performed work for Defendants in the County
7 of Merced, California, during the time period relevant to this FAC. Moreover, Defendants maintain
8 offices, have agents, and/or transact business in the County of Merced.

9 **PARTIES**

10 11. At all times relevant to this FAC, Plaintiff ADRIAN ARRILLAGA resided in the
11 County of Merced, California. Plaintiff ARRILLAGA was employed as a general field laborer by
12 Defendants from March 2019 to September 2019. Plaintiff ARRILLAGA reported for work at
13 Defendants' various farm locations, and their surrounding field areas, located in the cities of
14 Livingston, Merced, and Atwater, as instructed by Defendants. Plaintiff ARRILLAGA's last rate of
15 pay with Defendants was \$12.00 per hour.

16 12. At all times relevant to this FAC, Plaintiff ADRIAN ARRILLAGA HERNANDEZ
17 resided in the County of Merced, California. Plaintiff ARRILLAGA HERNANDEZ was employed as
18 a general field laborer by Defendants from March 2019 to September 2019. As instructed by
19 Defendants, Plaintiff ARRILLAGA HERNANDEZ reported for work at Defendants' various farm
20 locations, and their surrounding field areas, located in the cities of Livingston, Merced, and Atwater.
21 Plaintiff ARRILLAGA's last rate of pay with Defendants was \$12.00 per hour.

22 13. At all times relevant to this FAC, Plaintiff GRISELDA HERNANDEZ resided in the
23 County of Merced, California. Plaintiff HERNANDEZ was employed as a general field laborer by
24 Defendants from March 2019 to September 2019. Plaintiff HERNANDEZ reported for work at
25 Defendants' various farm locations, and their surrounding field areas, located in the cities of
26 Livingston, Merced, and Atwater, as instructed by Defendants. Plaintiff HERNANDEZ's last rate of
27 pay with Defendants was \$12.00 per hour

28 14. At all times relevant to this FAC, Plaintiff ROBERTO PEREZ resided in the County

1 of Stanislaus, California. Plaintiff PEREZ was employed as a general field laborer by Defendants from
2 March 2019 to June 2019. As instructed by Defendants, Plaintiff PEREZ reported for work at
3 Defendants' various farm locations, and their surrounding field areas, located in the cities of
4 Livingston, Merced, and Atwater. Plaintiff PEREZ's last rate of pay with Defendants was \$12.00 per
5 hour.

6 15. At all times relevant to this FAC, Defendant MININGER FARMS, INC., operated a
7 large agricultural enterprise dedicated to the farming and processing of sweet potatoes in the County
8 of Merced, and surrounding areas. On information and belief, MININGER FARMS owns and farms
9 over one thousand (1,000) acres of land in any given yearly harvest season.

10 16. At all times Relevant to this FAC, Defendant NATHAN WADE MINIGER served as
11 the Chief Executive Officer and Owner of Defendant MININGER FARMS, INC.

12 17. Defendants regularly conduct business in the State of California and, at all relevant
13 times to this FAC, were engaged in agricultural operations in and around Merced County, California,
14 and employed Plaintiffs and other members of the general public to perform work in agricultural
15 occupations such as field work, irrigation, harvesting, planting, sowing, pruning, and weed control.

16 18. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein
17 under the fictitious names, DOES 1 through 10, inclusive, and therefore sue said Defendants under
18 such fictitious names. On information and belief, each of the DOE Defendants is liable for the unlawful
19 acts alleged in this FAC and proximately caused the injuries and damages to Plaintiffs and Class
20 Members prosecuting this FAC. Once Plaintiffs ascertain the true names and capacities of these DOE
21 Defendants, Plaintiffs will seek leave of court to file a second amended Class and Representative
22 Action Complaint.

23 19. At all times relevant to this FAC, Defendants were the "employer" of Plaintiffs within
24 the meaning of all applicable California laws and statutes.

25 20. At all times relevant to this FAC, Defendants were subject to the California Labor Code
26 and IWC Wage Order 14-2001, because their employees worked in the County of Merced and
27 throughout the State of California.

28 21. At all times relevant to this FAC, each of the Defendants, including on information and

1 belief, other entities owned and operated by Defendant NATHAN WADE MININGER, along with
2 Defendant MININGER FARMS, INC., were the agents, partners, joint venturers, joint employers,
3 representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, of each of
4 the other Defendants.

5 22. At all times relevant to this FAC, each of the Defendants were acting within the course
6 and scope of their authority as such agents, partners, joint venturers, joint employers, representatives,
7 servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged in
8 this FAC were committed with the ratification, knowledge, permission, encouragement, authorization
9 and/or consent of each alleged DOE Defendant.

10 23. Plaintiffs further allege Defendants directly or indirectly controlled or affected the
11 working conditions, wages, working hours, and conditions of employment of Plaintiffs, Class
12 Members and other aggrieved employees so as to make each of the Defendants liable under the
13 statutory provisions set forth in this FAC as joint employers.

14 **CLASS ACTION ALLEGATIONS**

15 24. Plaintiffs bring this action on their own behalf an on behalf of all other members of the
16 general public similarly situated who were affected by Defendants' violations of the California Labor
17 Code, Business and Professions Code section 17200, and IWC Wage Order No. 14-2001.

18 25. Plaintiff brings this Class Action Complaint pursuant to California Code of Civil
19 Procedure section 382 because: the consent of all parties cannot be obtained; a question of common
20 or general interest exists (as defined below); the parties are numerous; and it is impractical to bring all
21 the parties before the court.

22 26. **Relevant Time Period:** The Relevant Time Period is the time period beginning four
23 years prior to the filing of this action until the Court enters judgment.

24 27. All claims alleged in this Class Action Complaint arise under California law for which
25 Plaintiffs seek relief authorized by California law. Plaintiffs' proposed Class consists of and is defined
26 as follows:

- 27 a. **Proposed Class:** All current or former hourly-paid or non-exempt employees
28 in agricultural occupations who worked for any of the Defendants within the

State of California at any time during the period from four years preceding the filing of this action to final judgment (“Class”).

28. Plaintiffs also seek to certify the following Subclasses:

a. **Proposed Wage Statement Penalty Subclass**: All members of the Class who worked for any of the Defendants within the State of California at any time during the period beginning one year before the filing of this action and ending when final judgment is entered (“Wage Statement Penalty Subclass”).

b. **Proposed Waiting Time Penalties Subclass**: All members of the Class who separated their working relationship from Defendants within three years before the filing of this action and ending when final judgment is entered (“Waiting Time Penalty Subclass”).

29. Plaintiffs reserve the right to seek leave of this Court to amend this Class Action Complaint to plead additional subclasses or modify any Class or Subclass definition as Plaintiffs deem appropriate, based on their investigation, discovery, and specific theories of liability.

30. Members of the Class and the Wage Statement Penalty and Waiting Time Penalty Subclasses described above will be collectively referred to as “Class Members” in this Class and Representative Action Complaint.

31. A well-defined community of interest in the litigation exists and the proposed Class and Subclasses are readily ascertainable:

a. **Numerosity**: The Class Members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiffs at this time; however, the Class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records.

b. **Typicality**: Plaintiffs’ claims are typical of all other Class Members as demonstrated in this FAC. Plaintiffs will fairly and adequately protect the interests of the other Class Members with whom they have a well-defined community of interest.

c. **Adequacy**: Plaintiffs will fairly and adequately protect the interests of each Class Member, with whom they have a well-defined community of interest and typicality of claims,

as demonstrated in this FAC. Plaintiffs have no interest that is antagonistic to the other Class Members. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred and will continue to incur during the pendency of this FAC, costs and attorneys' fees that have been, are, and will necessarily be expended for the prosecution of this FAC for the substantial benefit of each Class Member.

d. **Superiority**: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all Class Members is impractical.

e. **Public Policy Considerations**: Certification of this lawsuit as a class action will advance public policy objectives. Employers throughout the State of California violate employment and labor laws on a daily basis. Current employees are often reluctant to assert their rights individually because of fear of direct or indirect retaliation by their employers. Class actions however provide Class Members, who are not specifically named in the FAC, with anonymity that allows for the vindication of their rights without fear of direct or indirect retaliation by their employers.

32. Plaintiffs bring and maintain this FAC as a class action under California Code of Civil Procedure section 382 because common questions of law and fact exist as to the Class Members that predominate over questions of law and fact affecting only individual members including, but not limited to:

a. Whether Defendants' failure to pay wages without abatement or reduction in accordance with the California Labor Code was willful;

b. Whether Defendants had a corporate policy and practice of failing to pay their hourly non-exempt employees in agricultural occupations within the State of California for all hours worked and missed meal and rest periods (short, late, interrupted, and/or missed altogether) in violation of California law;

c. Whether Defendants required Plaintiffs and Class Members to work overtime hours and failed to pay the legally required overtime compensation to Plaintiffs and Class Members;

d. Whether Defendants deprived Plaintiffs and Class Members of meal and/or rest periods or required Plaintiffs and Class Members to work during meal and/or rest periods without

1 compensation;

2 e. Whether Defendants failed to pay minimum wages to Plaintiffs and Class
3 Members for all hours worked;

4 f. Whether Defendants failed to pay all wages due to Plaintiffs and Class
5 Members within the required time upon their separation – discharge or resignation;

6 g. Whether Defendants provided accurate, itemized wage statements to Plaintiffs
7 and Class Members as required by California law;

8 h. Whether Defendants failed to reimburse Plaintiffs and Class Members for
9 necessary business-related expenses and costs;

10 i. Whether Defendants' conduct was willful or reckless;

11 j. Whether Defendants engaged in unfair business practices in violation of
12 California Business & Professions Code section 17200 et seq.;

13 k. The appropriate amount of damages, restitution, and/or monetary penalties
14 resulting from Defendants' violation of California law; and

15 l. Whether Plaintiffs and Class Members are entitled to compensatory damages
16 pursuant to the California Labor Code and IWC Wage Order No. 14-2001.

17 33. At all times relevant to this FAC, Defendants employed Plaintiffs and other California
18 residents as hourly employees within the State of California, including the County of Merced.

19 34. Defendants, jointly and severally, employed Plaintiffs as hourly, non-exempt
20 agricultural employees from approximately March 2019 to September 2019, in the State of California.
21 More specifically, Plaintiffs were employed as general field laborers at various agricultural field sites
22 for Defendants in Merced County, and its surrounding areas.

23 35. Defendants continue to employ hourly, non-exempt employees in agricultural
24 occupations in California.

25 36. At all times relevant to this FAC, on information and belief, Defendants were advised
26 by skilled lawyers, employees, and other professionals who were knowledgeable about California's
27 wage and hour laws, employment, and personnel practices, and the requirements of California law.

28 37. At all times relevant to this FAC, Defendants were required by California law to

1 compensate Plaintiffs and Class Members for all hours worked (including minimum and overtime
2 wages) and did not compensate Plaintiffs and Class Members for all wages earned for work that
3 Defendants required them to perform. On information and belief, in violation of the Labor Code and
4 IWC Wage Order No. 14-2001, Defendants failed to pay Plaintiffs and Class Members all wages
5 due—including minimum and overtime wages—for all hours worked. This included failing to pay
6 Plaintiffs and Class Members the correct overtime rate for the recorded overtime hours they generated.

7 38. At all times relevant to this FAC, Defendants were required by California law to
8 provide Plaintiffs and Class Members with meal periods in compliance with California law or payment
9 of one (1) additional hour of pay at Plaintiffs’ and Class Members’ regular rate of pay when
10 Defendants did not provide them with a complete, timely, uninterrupted meal period. On information
11 and belief, in violation of the Labor Code and IWC Wage Order No. 14-2001, Defendants did not
12 always provide Plaintiffs and Class Members with meal periods in compliance with California law
13 and did not provide Plaintiffs and Class Members with one (1) additional hour of pay at Plaintiffs’ and
14 Class Members’ regular rate of pay when they did not provide them with a complete, timely,
15 uninterrupted meal period.

16 39. At all times relevant to this FAC, Defendants were required by California law to
17 provide Plaintiffs and Class Members rest periods or payment of one (1) additional hour of pay at
18 Plaintiffs’ and Class Members’ regular rate of pay when they did not provide Plaintiffs and Class
19 members with a rest period in compliance with California law. On information and belief, in violation
20 of the Labor Code and IWC Wage Order No. 14-2001, Defendants did not always provide Plaintiffs
21 and Class Members with rest periods in compliance with California law and Defendants did not
22 provide Plaintiffs and Class Members with payment of one (1) additional hour of pay at Plaintiffs’ and
23 Class Members’ regular rate of pay when Defendants did not provide Plaintiffs and Class Members
24 with a compliant rest period.

25 40. At all times relevant to this FAC, Defendants were required by California law to timely
26 pay Plaintiffs and Waiting Time Penalty Class Members their wages upon separation of employment.
27 On information and belief, in violation of the California Labor Code and IWC Wage Order No. 14-
28 2001, Defendants did not pay Plaintiffs and Waiting Time Penalty Class Members all of their wages

1 due upon separation of employment within the time period required by California law, including, but
2 not limited to: unpaid minimum, overtime and double-time wages.

3 41. At all times relevant to this FAC, California law required Defendants to provide
4 Plaintiffs and Class Members with accurate and itemized wage statements in accordance with
5 California law. On information and belief, in violation of the California Labor Code and IWC Wage
6 Order No. 14-2001, Defendants did not provide Plaintiffs and Class Members with accurate and
7 itemized wage statements detailing their total hours worked, number of hours worked at each hourly
8 rate, and gross and net wages, among other required information.

9 42. At all times relevant to this FAC, Defendants were required by California law to
10 reimburse Plaintiffs and Class Members for business-related expenditures. On information and belief,
11 in violation of the California Labor Code and IWC Wage Order No. 14-2001, Defendants did not
12 provide Plaintiffs and Class Members with indemnification or reimbursement for all business-related
13 expenditures, including expenses associated with purchasing plastic boots, gloves and other supplies
14 necessary and required for their work.

15 43. At all times relevant to this FAC, Defendants were required by California law to fully
16 compensate Plaintiffs and Class Members, and Defendants, despite having the financial ability to pay
17 such compensation, willfully, knowingly and intentionally failed to do so, in order to increase their
18 profits at the expense of Plaintiffs' and Class Members' rights.

19 44. In view of the Defendants' aforementioned violations of the California Labor Code and
20 IWC Wage Order No. 14-2001, Plaintiffs bring this FAC on behalf of themselves, as individuals, and
21 on behalf of all Class Members and aggrieved employees, seeking monetary and injunctive relief
22 against Defendants to recover, among other things, unpaid wages, interest, attorneys' fees, penalties,
23 costs, and expenses.

24 45. As alleged in this FAC, Defendants have engaged in a systematic pattern and practice
25 of wage theft under the California Labor Code and IWC Wage Order No. 14-2001 for the purpose of
26 maximizing profit at the expense of their employees' rights under California law, all of which
27 contribute to Defendants' deliberate unfair competition.

28 46. Plaintiffs further bring this FAC pursuant to California Labor Code section 218, which

1 provides that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue
2 directly . . . for any wages or penalty due to him under this article.”

3 **SPECIFIC ALLEGATIONS**

4 **Failure to Pay Minimum and Overtime Wages**

5 47. At all times relevant to this FAC, Defendants employed hundreds of Class Members,
6 many for successive seasons, each of which spanned for several months. Each season Defendants
7 recruited these Class Members in California and hired them to perform work for Defendants at various
8 locations in California including Merced, Atwater, and Livingston, California, and their surrounding
9 areas. Class Members performed work as hourly non-exempt employees in agricultural occupations
10 engaged in various duties related to farming, including irrigation, harvesting, planting, sowing,
11 pruning, weed control and other duties. The work was performed in vast fields spread throughout
12 Merced County.

13 48. Plaintiffs and Class Members generally had to report to work each day at a central
14 location in a yard located in the vicinity of Defendants’ sweet potato fields. They reported as instructed
15 by Defendants’ supervisor, some as early as 5:00 a.m. or 6:00 a.m. to prepare various items needed
16 for the workday. At all times from the point that workers arrived at the yard each morning, they were
17 under the direction and control of Defendants.

18 49. Upon arriving to the yard, Plaintiffs and Class Members had to engage in a series of
19 pre-shift duties that were not compensated by Defendants and were for the benefit of Defendants.
20 Regularly, Plaintiffs and Class Members were required to perform various tasks that included putting
21 on plastic boots, gloves, and other necessary equipment to work in the fields. Plaintiffs and Class
22 Members also had to make sure they had all the appropriate tools necessary for the day. All of these
23 tasks took place before workers were “on the clock,” and Defendants did not compensate the crew’s
24 workers for this time.

25 50. Plaintiffs and Class Members were also regularly required to perform various tasks at
26 the end of the day before leaving the sweet potato fields. These tasks included cleaning the equipment
27 at the end of the shift, walking back to the yard and returning equipment, and removal of their boots,
28 gloves, and other equipment they used for work. Workers were not paid for this work time.

1 51. Plaintiffs and Class Members went “on the clock” and were credited with time worked
2 only when their supervisor directed them that it was time to start tracking their hours—typically at 7:00
3 a.m., until after they had walked through the fields to reach their own placement and assignment, and
4 after they had engaged in the various pre-shift duties described above. The walk through the fields
5 would vary but would generally last between ten (10) and fifteen (15) minutes. As a result of this
6 practice, Plaintiffs, and on information and belief, Class Members were required to wait prolonged
7 periods to go “on the clock” after arriving at the yard.

8 52. Plaintiffs and Class Members went off the clock after their supervisor verbally
9 informed them to stop work. Plaintiffs and Class Members were forced to walk back from their last
10 work location in the fields to the yard—a walk that took as long as ten (10) to fifteen (15) minutes.
11 Defendants did not compensate workers for this walking time.

12 53. Additionally, Plaintiffs, and, on information and belief, Class Members, had to often
13 stay behind to pick up work materials, clean them, and return them to the yard to be ready for the next
14 day of work—all without being paid by Defendants.

15 54. The actual time that the workday would begin was not known to Plaintiffs and the Class
16 Members because of the variations in time spent performing work at the yard, the time spent walking
17 to and from their exact work location, and waiting for instructions from supervisors as to when they
18 exactly would be credited for work on their timecards. Supervisors controlled the times Plaintiffs and
19 Class Members could note on their timecards. As a result, Defendants could not and did not provide
20 them with a reliable reporting time.

21 55. At all times while walking to and from their daily work location, Plaintiffs and Class
22 Members were under the direction and control of Defendants. Indeed, Plaintiffs and Class Members
23 working on any given day had to walk over controlled agricultural fields to their assigned location.

24 56. Having Plaintiffs and Class Members reporting to a central location every day and the
25 time they spent walking to the exact job sites also benefitted the Defendants, as it allowed them to
26 have crews ready at the time that it deemed best for irrigation/farming/planting activities to begin,
27 allowed them to have crews to help with pre-shift and post-shift tasks, and allowed Defendants to rely
28 on a steady supply of experienced crews of workers that it could deploy from one location to other

1 locations throughout their vast sweet potato fields.

2 57. Further, Defendants did not always provide Plaintiffs and Class Members with meal
3 periods as required by California law. That is, Defendant did not provide Plaintiffs and Class Members
4 with meal periods that were timely, complete, and uninterrupted, if any meal periods were provided at
5 all. When meal periods were provided, the exact start and end time of meal periods was not tracked
6 and workers were simply instructed by supervisors to write a thirty (30) minute time slot in their
7 timecards at the end of the day. Accordingly, Plaintiffs and Class Members had no way of knowing
8 the exact start and end time of any meal periods because of this auto deduct policy. As such, Plaintiffs
9 and Class Members missed meal periods and/or had their meal periods cut short without receiving any
10 compensation from Defendants for this time worked.

11 **Failure to Pay Overtime Premiums and the Correct Overtime Rate**

12 58. Plaintiffs' pay records, and on information and belief, the pay records of Class
13 Members, demonstrate that anytime they worked overtime hours they were not paid the correct
14 overtime premium and were only paid their regular hourly rate. These violations were ongoing and
15 Plaintiffs, and on information and belief, Class Members, often worked more than sixty (60) hours per
16 week and more than ten (10) hours per day and were not paid the correct overtime premium.

17 **Failure to Provide Meal Periods**

18 59. As previously alleged in this FAC, Defendants had, and continue to have, a de facto
19 auto-deduct meal period company-wide policy and/or practice that prevented Plaintiffs and Class
20 Members from taking all timely, complete, and uninterrupted meal periods. Defendants required
21 Plaintiffs and Class Members to work through part or all of their meal periods, permitted their meal
22 periods to be interrupted, and/or wait extended periods of time before taking meal periods. Further,
23 Defendants did not provide Plaintiffs and Class Members with second 30-minute meal periods on days
24 that they worked in excess of ten (10) hours in one day. Plaintiffs and Class Members did not sign
25 valid meal period waivers for days in which they were entitled to meal periods and were not relieved
26 of all duties.

27 60. Moreover, Defendants engaged in a policy and practice of depriving Plaintiffs of a
28 significant portion of their meal periods. Plaintiffs were not allowed to eat on the fields, and for that

1 reason were forced to walk back and forth to and from the yards to take a lunch period. Due to this
2 policy and practice, Plaintiffs meal periods were severely shortened and Plaintiffs were forced to rush
3 through their meal periods to eat their food and attend to personal needs. This policy and practice made
4 it impossible for Plaintiffs to leave the job site.

5 61. Defendants knew or should have known that as a result of their de facto auto-deduct
6 policy and practice of failing to provide meal periods, that Plaintiffs and Class Members were not
7 actually relieved of all duties to take timely, complete, and uninterrupted meal periods. Defendants
8 further knew or should have known that they did not pay Plaintiffs and Class Members meal period
9 premium wages when they were missed, late, short, and/or interrupted.

10 62. Defendants have engaged in a company-wide practice and/or policy of not paying meal
11 period premiums for days when they did not provide employees with compliant meal periods. Because
12 of this practice and/or policy, Plaintiffs and Class Members have not received premium pay for meal
13 periods that were missed, late, short, or interrupted.

14 **Failure to Provide Rest Periods**

15 63. As with meal periods, Defendants had a company-wide policy and practice of failing
16 to relieve Plaintiffs and Class Members of all duties in order to provide them with rest periods as
17 required by California law. This practice was further compounded by the fact that Defendants required
18 Plaintiffs and Class Members to wait to go to the bathrooms until their rest break times as the bathroom
19 were often far from their exact work location. Plaintiffs and Class Members therefore worked shifts
20 in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all
21 uninterrupted 10-minute rest periods to which they were entitled. When Plaintiffs and Class Members
22 worked more than ten (10) hours in a day, Plaintiffs and Class Members were not provided with a
23 third rest period.

24 64. Moreover, Defendants deprived Plaintiffs of preventative cool-down rest periods every
25 two hours when the temperature in the fields exceeded ninety-five (95) degrees Fahrenheit. As per
26 the California Code of Regulations, preventative cool-down rest periods have the same meaning as
27 “recovery period” in Labor Code section 226.7, subdivision (a). Defendants, failed to take measures
28 to prevent heat illness in the workplace, including failing to provide cool-down rest periods, failing to

1 provide water to workers in the field, and/or shade to allow a natural cool-down process. As a result
2 of Defendants' failures, numerous employees suffered the effects of heat illness and fainted in the
3 fields.

4 65. Defendants also have engaged in a company-wide practice and/or policy of not paying
5 employees all rest period premiums when they failed to provide them with compliant rest periods.
6 Because of this practice and/or policy, Plaintiffs and Class Members have not received premium pay
7 for all missed rest periods.

8 **Failure to Provide Compliant Wage Statements and Maintain Required Payroll Records**

9 66. Defendants have knowingly and intentionally provided Plaintiffs and Class Members
10 with uniform, incomplete, and inaccurate wage statements. Specifically, Defendants violated sections
11 226, subdivisions (a)(1), (2), (5), (8), and (9). Defendants deducted time worked from Plaintiffs and
12 Class Members' wage statements and employment records for interrupted or missed meal periods (and
13 therefore time for which they should have been paid), and did not record time Plaintiffs' and Class
14 Members spent working off the clock, which resulted in an unlawful deduction of wages earned and
15 meal period premiums that should have been paid. Thus, Defendants did not furnish wage statements
16 to Plaintiffs and Class Members containing accurate totals of: the gross wages earned (Lab. Code, §
17 226, subd. (a)(1)); the hours worked (Lab. Code, § 226, subd. (a)(2)); net wages earned (Lab. Code, §
18 226, subd. (a)(5)); and the number of hours worked at each hourly rate (Lab. Code, § 226, subd. (a)(9)).

19 67. Defendants did not list a total of hours worked or the correct amount of gross wages in
20 compliance with section 226, subdivision (a)(1) and (2). For the same reason, Defendants also failed
21 to list the correct amount of net wages in violation of section 226, subdivision (a)(5). Defendants also
22 failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct
23 overtime rates of pay in violation of section 226, subdivision (a)(9). Additionally, Defendants failed
24 to list the name and address of the proper legal entity that employed Plaintiffs and Class Members
25 (Lab. Code, § 226, subd. (a)(8)).

26 68. Moreover, Defendants failed to maintain time records detailing when their employee
27 began and ended each work period, meal period, and split shift interval, as required by IWC Wage
28 Order No. 14-2001.

1 **Failure to Timely Pay Final Wages Upon Termination**

2 69. Defendants have a company-wide practice or policy of not paying departing employees
3 their final wages on their last day of employment or within seventy-two (72) hours of resigning without
4 prior notice, instead of abiding by the time requirements required by California Labor Code sections
5 201 and 202. Thus, Defendants failed to timely pay Plaintiffs' and Class Members' owed wages within
6 the required time limit in violation of California Labor Code section 201.

7 70. Additionally, Defendants willfully failed to pay Plaintiffs and Class Members who are
8 no longer employed by Defendants all their earned wages either at the time of discharge or within
9 seventy-two (72) hours of their leaving Defendants' employ in violation of California Labor Code
10 sections 201, 202, and 203, including, but not limited to overtime, double-time and minimum wages.

11 **Failure to Reimburse Business Expenses**

12 71. Defendants had, and continue to have, a company-wide policy and/or practice of not
13 reimbursing employees for expenses necessarily incurred, in violation of California law.

14 72. First, at all times relevant time to this FAC, Defendants failed to provide Plaintiffs and
15 Class Members with adequate supplies/uniforms for the tasks Defendants required them to perform.
16 Instead, Defendants required Plaintiffs and Class Members to pay out-of-pocket for some of their
17 uniform expenses including but not limited to plastic boots, and gloves. Plaintiffs and Class Members
18 regularly worked in wet, humid, and often muddy ground conditions which required them to use this
19 protective equipment. Defendants however did not provide these uniforms/supplies to employees and
20 instead required Plaintiffs and Class Members to purchase these on their own without reimbursement
21 for this expense in violation of California law.

22 73. Defendants could have provided Plaintiffs and Class Members with the actual supplies
23 for use on the job, including plastic boots, and gloves for fulfilling work-related tasks, or could have
24 reimbursed employees for these expenses. Instead, Defendants required workers to bear the burden of
25 these expenses without reimbursement in violation of California law.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **[Cal. Labor Code, §§ 1182.12, 1194, 1194.2, 1194.5, 1197, 1198;**

4 **IWC Wage Order No. 14-2001, § 4]**

5 **(Brought by All Plaintiffs Against All Defendants)**

6 74. Plaintiffs, on behalf of themselves and Class Members, re-allege and incorporate by
7 reference all previous paragraphs of this FAC.

8 75. California Labor Code section 1198 makes unlawful the employment of an employee
9 under conditions the IWC prohibits.

10 76. California Labor Code sections 1182.12, 1194, and 1197, and IWC Wage Order No.
11 14-2001, section (4), make it unlawful for employers to pay hourly, non-exempt employees less than
12 the minimum wage fixed by California law.

13 77. California Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a),
14 provide that an employer that fails to pay its employees the legal minimum wage is liable to pay those
15 employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal
16 to the wages unpaid and interest thereon.

17 78. California Labor Code section 558.1, subdivision (a), provides that any employer or
18 other person acting on behalf of an employer, who violates, or causes to be violated, any provision
19 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
20 Commission, or violates, or causes to be violated, among others, California Labor Code section 1194,
21 may be held liable as the employer for such violation. California Labor section 558.1, subdivision (b),
22 defines “other person acting on behalf of an employer” as a “natural person who is an owner, director,
23 officer, or managing agent of the employer.”

24 79. At all times relevant time to this FAC, Defendants failed to pay minimum wage to
25 Plaintiffs and Class Members as required by California Labor Code sections 1182.12, 1194, 1197, and
26 1198, by having followed and by continuing to follow a policy and practice of failing to pay Plaintiffs
27 and Class Members at or above the California minimum wage for many hours worked by Plaintiffs
28 and Class Members, including but not limited to: hours Defendants required, permitted, or suffered

1 Plaintiffs and Class Members to work off the clock including work time spent completing pre and
2 post-shift duties; time spent traveling to and from exact work locations that was not compensated;
3 hours that Defendants altered or removed from time records; and hours Defendants required,
4 permitted, or suffered Plaintiffs and Class Members to work through unpaid breaks.

5 80. At all times relevant to this FAC, Defendants knowingly and willfully failed to pay
6 minimum wages as required by California law.

7 81. As a direct and proximate result of Defendants' failure to pay minimum wages as
8 required by California law, Plaintiffs and Class Members sustained damages.

9 82. Pursuant to California Labor Code sections 1194, 1194.2, and 1197, Plaintiffs and
10 Class Members are entitled to recover from the Defendants the unpaid balance of their minimum wage
11 compensation not paid to them by Defendants, as well as interest at a rate of 10 percent per annum
12 under California Labor Code section 218.6, costs, attorney's fees, and liquidated damages in an
13 amount equal to the wages unlawfully unpaid and interest thereon.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME WAGES**

16 **[Cal. Labor Code, §§ 1194 and 1198; IWC Wage Order No. 14-2001, § 3]**

17 **(Brought by All Plaintiffs Against All Defendants)**

18 83. Plaintiffs, on behalf of themselves and Class Members, re-allege and incorporate by
19 reference all previous paragraphs of this FAC.

20 84. California Labor Code section 1198 makes unlawful the employment of an employee
21 under conditions the IWC prohibits.

22 85. IWC Wage Order No. 14-2001, section (3), makes it unlawful for employers to employ
23 individuals in agricultural occupations without compensating them at minimum wage for all hours
24 worked and at their applicable overtime rate of pay for all overtime hours worked.

25 86. IWC Wage Order No. 14-2001, section (3), provides that employers must compensate
26 hourly, non-exempt employees with overtime compensation paid at one and-one-half times the
27 employee's regular hourly rate for hours worked in excess of ten (10) hours per day or sixty (60) hours
28 per week or for the first eight (8) hours worked on the seventh day of work, and overtime compensation

1 paid at twice the employee's regular hourly rate for hours worked in excess of eight (8) hours in a day
2 on the seventh day of work.

3 87. IWC Wage Order No. 14-2001, section (3), also provides that for employers of more
4 than twenty-five (25) employees, starting January 1, 2019, an employee shall not be employed more
5 than nine and one-half (9.5) hours per workday or fifty-five (55) hours per workweek unless the
6 employee receives one and one-half (1.5) times such employee's regular rate of pay for all hours
7 worked over nine and one-half (9.5) hours in any one workday or more than fifty-five (55) hours in
8 any one workweek. In addition, Section 3 provides that for employers of more than twenty-five (25)
9 employees, starting January 1, 2020, an employee shall not be employed more than nine (9.0) hours
10 per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1.5)
11 times such employee's regular rate of pay for all hours worked over nine (9.0) hours in any one
12 workday or more than fifty (50) hours in any one workweek. Moreover, Section 3 provides that for
13 employers of more than twenty-five (25) employees, starting January 1, 2021, an employee shall not
14 be employed more than eight and one-half (8.5) hours per workday or forty-five (45) hours per
15 workweek unless the employee receives one and one-half (1.5) times such employee's regular rate of
16 pay for all hours worked over eight and one-half (8.5) hours in any one workday or more than forty
17 five (45) hours in any one workweek. Lastly, Section 3 provides that for employers of more than
18 twenty-five (25) employees, starting January 1, 2022, an employee shall not be employed more than
19 eight (8.0) hours per workday or forty (40) hours per workweek unless the employee receives one and
20 one-half (1.5) times such employee's regular rate of pay for all hours worked over eight (8.0) hours in
21 any workday or more than forty (40) hours in any workweek and double the employee's regular rate
22 of pay for all hours worked over twelve (12) hours in any one workday.

23 88. California Labor Code section 1194, subdivision (a), entitles an employee to recover
24 in a civil action the unpaid balance of all overtime compensation due but unpaid.

25 89. California Labor Code section 558.1, subdivision (a), provides that any employer or
26 other person acting on behalf of an employer, who violates, or causes to be violated, any provision
27 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
28 Commission, or violates, or causes to be violated, among others, California Labor Code section 1194,

1 may be held liable as the employer for such violation. California Labor section 558.1, subdivision (b),
2 defines “other person acting on behalf of an employer” as a “natural person who is an owner, director,
3 officer, or managing agent of the employer.”

4 90. At all times relevant to this FAC, Plaintiffs and Class Members are current and former
5 hourly, non-exempt employees in agricultural occupations entitled to the protections of California
6 Labor Code sections 1194 and IWC Wage Order No. 14-2001.

7 91. At all times relevant to this FAC, Plaintiffs and Class Members regularly worked
8 overtime hours on a daily and weekly basis.

9 92. At all times relevant to this FAC, Defendants failed to pay overtime wages to Plaintiffs
10 and Class Members as required by the California Labor Code and IWC Wage Order No. 14-2001,
11 section (3), by having followed and by continuing to follow a policy and practice of failing to pay
12 Plaintiffs and Class Members at or above the applicable overtime and double-time rate required under
13 California law for many hours worked by Plaintiffs and Class Members, including but not limited to:
14 overtime hours that were paid at Plaintiffs’ and Class Members’ regular hourly rate; hours Defendants
15 required, permitted, or suffered Plaintiffs and Class Members to work off the clock including work
16 time spent completing pre and post-shift duties; time spent traveling to and from exact work locations
17 that was not compensated; and hours that Defendants altered or removed from time records; hours
18 Defendants required, permitted, or suffered Plaintiffs and Class Members to work through unpaid
19 breaks.

20 93. Defendants committed and continue to commit the acts alleged in this FAC knowingly
21 and willfully.

22 94. As a direct and proximate result of Defendants’ failure to pay overtime wages as
23 required by California law, Plaintiffs and Class Members sustained damages.

24 95. Pursuant to California Labor Code section 1194, subdivision (a), Plaintiffs and Class
25 Members are entitled to recover unpaid overtime compensation, as well as interest at a rate of 10
26 percent per annum under California Labor Code section 218.6, costs, and attorneys’ fees.

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THIRD CAUSE OF ACTION

FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

[Cal. Labor Code, §§ 226.7 and 512, subd. (a); IWC Wage Order No. 14-2001, § 11]

(Brought by All Plaintiffs Against All Defendants)

96. Plaintiffs, on behalf of themselves and Class Members, re-allege and incorporate by reference all previous paragraphs of this FAC.

97. California Labor Code section 1198 makes unlawful the employment of an employee under conditions the IWC prohibits.

98. California Labor Code section 226.7, subdivision (b), makes it unlawful for employers to require hourly, non-exempt employees to work during any meal period mandated by an applicable IWC Order.

99. California Labor Code section 512, subdivision (a), and IWC Wage Order No. 14, section (11), subdivision (A), make it unlawful for an employer to require, cause or permit an hourly-paid, non-exempt employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that when the total work period per day of the employee is no more than six (6) hours the meal period may be waived by mutual consent of both the employer and employee.

100. California Labor Code section 512, subdivision (a), and IWC Wage Order No. 14, section (11), subdivision (B), also make it unlawful for an employer, like Defendants, to require, cause, or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that when the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee but only if the first meal period was not waived by the employee.

101. Pursuant to California Labor Code section 226.7, subdivision (c), if an employer fails to provide an employee a meal period as required, the employer must pay the employee one hour of pay at the employee's regular rate of compensation for each workday that a meal period is not provided as required.

1 102. California Labor Code section 558.1, subdivision (a), provides that any employer or
2 other person acting on behalf of an employer, who violates, or causes to be violated, any provision
3 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
4 Commission, or violates, or causes to be violated, among others, California Labor Code section 226.7,
5 may be held liable as the employer for such violation. California Labor section 558.1, subdivision (b),
6 defines “other person acting on behalf of an employer” as a “natural person who is an owner, director,
7 officer, or managing agent of the employer.”

8 103. At all times relevant to this FAC, Defendants failed to provide Plaintiffs and the Class
9 Members with a 30-minute, duty-free meal period for every five hours of work. Employees routinely
10 missed meal periods or had late, short, or interrupted meal periods due to a heavy workload,
11 insufficient staffing, and instructions from supervisors to cut their meal periods short. In addition,
12 Defendants required that employees fill out their timecards at the end of the day to reflect an exact
13 thirty (30) minute meal break, even when employees were not able to take compliant meal periods or
14 any meal periods at all. This de facto auto-deduct policy instituted by Defendants created the false
15 appearance that compliant meal periods were taken when they were not. Further, Defendants did not
16 provide Plaintiffs and Class Members with second 30-minute meal periods on days that they worked
17 in excess of ten (10) hours in one day.

18 104. At all times relevant to this FAC, Defendants failed to pay Plaintiffs and Class
19 Members meal period premium pay due for non-compliant meal periods, pursuant to California Labor
20 Code section 226.7, subdivision (c).

21 105. At all times relevant to this FAC, Defendants knowingly and willfully failed to pay
22 Plaintiffs and Class Members premium pay for non-compliant meal periods as required by California
23 law.

24 106. As a direct and proximate result of Defendants’ failure to pay premium pay for non-
25 compliant meal periods as required by California law, Plaintiffs and Class Members sustained
26 damages.

27 107. Pursuant to California Labor Code section 226.7, subdivision (c), and IWC Wage Order
28 No. 14-2001, section (11), Plaintiffs and Class Members are entitled to recover from Defendants one

1 additional hour of pay at the employees' regular hourly rate of compensation for each workday that a
2 compliant meal period was not provided, including interest thereon at a rate of seven percent per
3 annum under California Civil Code section 3287.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE COMPLIANT REST PERIODS**

6 **[Cal. Labor Code, § 226.7; IWC Wage Order No. 14-2001, § 12]**

7 **(Brought by All Plaintiffs Against All Defendants)**

8 108. Plaintiffs, on behalf of themselves and Class Members, re-allege and incorporate by
9 reference all previous paragraphs of this FAC.

10 109. California Labor Code section 1198 makes unlawful the employment of an employee
11 under conditions the IWC prohibits.

12 110. California Labor Code section 226.7, subdivision (b), prohibits an employer from
13 requiring an employee to work during any rest break mandated by an applicable Industrial Wage
14 Order.

15 111. IWC Wage Order No. 14-2001, section (12), requires employers to authorize and
16 permit employees who work three and one half or more hours in a day to take a paid rest period of at
17 least 10 minutes for every four hours worked or major fraction thereof, which insofar as practicable
18 shall be in the middle of each work period.

19 112. Pursuant to California Labor Code section 226.7, subdivision (c), if an employer fails
20 to provide an employee a rest period as required, then the employer must pay the employee one hour
21 of pay at the employee's regular rate of compensation for each workday that a rest period is not
22 provided as required.

23 113. California Labor Code section 558.1, subdivision (a), provides that any employer or
24 other person acting on behalf of an employer, who violates, or causes to be violated, any provision
25 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
26 Commission, or violates, or causes to be violated, among others, California Labor Code section 226.7,
27 may be held liable as the employer for such violation. California Labor section 558.1, subdivision (b),
28 defines "other person acting on behalf of an employer" as a "natural person who is an owner, director,

1 officer, or managing agent of the employer.”

2 114. At all times relevant to this FAC, Defendants required Plaintiffs and Class Members to
3 work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each
4 four (4) hour period worked or major fraction thereof in violation of California law.

5 115. At all times relevant to this FAC, Defendants did not provide Plaintiffs and Class
6 Members with a duty-free rest period of at least 10 minutes for every four hours of work or major
7 fraction thereof. Plaintiffs and Class Members were unable to take compliant rest periods for the same
8 reasons they could not take compliant meal periods. Additionally, when Plaintiffs and Class Members
9 worked more than ten (10) hours in a day, Plaintiffs and Class Members were not provided with a
10 third rest period.

11 116. Further, Defendants deprived Plaintiffs and Class Members of preventative cool-down
12 rest periods every two hours when the temperature in the fields exceeded ninety-five (95) degrees
13 Fahrenheit. California Code of Regulations, Title 8, Section 3395, provides that an “[w]hen
14 temperatures reach 95 degrees or above, the employer shall ensure that the employee takes a minimum
15 ten minute net preventative cool-down rest period every two hours.” Notably, a “preventative cool-
16 down rest period has the same meaning as “recovery period” in Labor Code section 226.7, subdivision
17 (a). Defendants, failed to take measures to prevent heat illness in the workplace, including failing to
18 provide cool-down 10 minute rest periods, failing to provide water to workers in the field, and/or shade
19 to allow a natural cool-down process.

20 117. At all times relevant to this FAC, Defendants knowingly and willfully failed and
21 continue to fail to pay Plaintiffs and Class Members premium pay for non-compliant rest periods as
22 required by California law.

23 118. As a direct and proximate result of Defendants’ failure to pay premium pay for non-
24 compliant rest periods as required by California law, Plaintiffs and Class Members sustained damages.

25 119. Pursuant California Labor Code section 226.7, subdivision (c), and IWC Wage Order
26 14-2001, section (12), Plaintiffs and Class Members are entitled to recover from Defendants one
27 additional hour of pay at the employee’s regular hourly rate of compensation for each work day that a
28 compliant rest period was not provided, including interest thereon at a rate of seven percent per annum

1 under California Civil Code section 3287.

2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

4 **[Cal. Labor Code § 226; IWC Wage Order No. 14-2001, § 7]**

5 **(Brought by All Plaintiffs Against All Defendants)**

6 120. Plaintiffs, on behalf of themselves and Wage Statement Penalty Subclass Members, re-
7 allege and incorporate by reference all previous paragraphs of this FAC.

8 121. California Labor Code section 226, subdivision (a), provides that every employer, like
9 Defendants, must provide each of their employees, like Plaintiffs and members of the Wage Statement
10 Penalty Subclass, with an accurate itemized wage statement in writing detailing the following
11 information: (1) gross wages earned; (2) total hours worked by the employee, except for any employee
12 whose compensation is solely based on a salary and who is exempt from payment of overtime under
13 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the
14 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
15 basis; (4) all deductions, provided that all a deductions made on written orders of the employee may
16 be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
17 which the employee is paid; (7) the name of the employee and his or her social security number, except
18 that by January 1, 2008, only the last four digits of his or her social security number or an employee
19 identification number other than a social security number may be shown on the itemized statement;
20 (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in
21 effect during the pay period and the corresponding number of hours worked at each hourly rate by the
22 employee.

23 122. California Labor Code section 226, subdivision (e), provides that an employee who
24 suffers injury as a result of a knowing and intentional failure by an employer to comply with section
25 226, subdivision (a), may recover the greater of actual damages or the civil penalties designated by
26 statute of \$50 for the initial pay period. California Labor Code section 226, subdivision (e)(2)(B),
27 provides that an employee is deemed to suffer injury if the wage statement fails to accurately and
28 completely provide certain information and the employee cannot promptly and easily determine such

1 information from the wage statement alone. In relevant part, California Labor Code section 226,
2 subdivision (e)(2)(B), provides that an employee is deemed to suffer injury if the wage statement does
3 not accurately and completely state the total number of hours worked by the employee, all applicable
4 hourly rates in effect during the pay period, and the corresponding number of hours worked at each
5 hourly rate.

6 123. California Labor Code section 558.1, subdivision (a), provides that any employer or
7 other person acting on behalf of an employer, who violates, or causes to be violated, any provision
8 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
9 Commission, or violates, or causes to be violated, among others, California Labor Code section 226,
10 may be held liable as the employer for such violation. California Labor section 558.1, subdivision (b),
11 defines “other person acting on behalf of an employer” as a “natural person who is an owner, director,
12 officer, or managing agent of the employer.”

13 124. Plaintiffs are informed and believe, and based thereon allege, that Defendants
14 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiffs and
15 members of the Wage Statement Penalty Subclass with complete and accurate wage statements with
16 respect to their actual regular and overtime hours worked, total gross wages earned, total net wages
17 earned, and hourly rates of pay in violation of California Labor Code section 226 et seq. Defendants
18 also failed to list the name and address of the proper legal entity that employed Plaintiffs and Class
19 Members (Lab. Code, § 226, subd. (a)(8)).

20 125. Defendants’ failures in furnishing Plaintiffs and members of the Wage Statement
21 Penalty Subclass with complete and accurate itemized wage statements resulted in actual injury, as
22 said failures led to, among other things, the non-payment of all earned overtime and minimum wages,
23 and deprived them of the information necessary to identity the discrepancies in Defendants’ reported
24 data. Additionally, by failing to provide the correct company physical address on Defendants’
25 paystubs, Defendants’ deprived Plaintiffs and members of the Wage Statement Penalty Subclass with
26 information necessary to address and rectify these issues.

27 126. Defendants’ failures create an entitlement to recovery by Plaintiffs and members of the
28 Wage Statement Penalty Subclass in a civil action for all damages and/or penalties pursuant to Labor

1 Code section 226 et seq., including statutory penalties, civil penalties, reasonable attorneys' fees, and
2 costs of suit according to California Labor Code section 226 et seq.

3 127. California Labor Code section 226, subdivision (h), authorizes courts to issue
4 injunctive relief to remedy violations of section 226, subdivision (a). Plaintiffs and members of the
5 Wage Statement Penalty Subclass are entitled to injunctive relief under the governing legal standards
6 and are entitled to an order enjoining Defendants: (i) to immediately begin providing to Plaintiffs and
7 current employee members of the Wage Statement Penalty Subclass itemized wage statements
8 containing all of the information required to be detailed by California Labor Code section 226,
9 subdivision (a); and (ii) to immediately provide to all Plaintiffs and members of the Wage Statement
10 Penalty Subclass the information required be disclosed by California Labor Code section 226,
11 subdivision (a), dating back to those employees' beginning of employment or to the start of the
12 applicable limitations period, whichever is further back in time

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

15 **[Cal. Labor Code, §§ 201, 202, and 203]**

16 **(Brought by All Plaintiffs Against All Defendants)**

17 128. Plaintiffs, on behalf of themselves and Waiting Time Penalty Subclass Members, re-
18 allege and incorporate by reference all previous paragraphs of this Complaint.

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

25 130. California Labor Code section 203 provides that if an employer willfully fails to pay
26 wages owed in accordance with sections 201 and 202, then the wages of the employee shall continue
27 as a penalty from the due date, and at the same rate until paid or until an action is commenced, but the
28 wages shall not continue for more than thirty (30) days.

1 131. California Labor Code section 558.1, subdivision (a), provides that any employer or
2 other person acting on behalf of an employer, who violates, or causes to be violated, any provision
3 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
4 Commission, or violates, or causes to be violated, among others, California Labor Code section 203,
5 may be held liable as the employer for such violation. California Labor section 558.1, subdivision (b),
6 defines “other person acting on behalf of an employer” as a “natural person who is an owner, director,
7 officer, or managing agent of the employer.”

8 132. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to
9 timely pay Plaintiffs and members of the Waiting Time Penalty Subclass all final wages due to them
10 at their separation from employment, including, unpaid minimum wages, overtime, and double-time
11 wages.

12 133. Further, Plaintiffs are informed and believe, and based thereon allege, that as a matter
13 of uniform policy and practice, Defendants continue to fail to pay Plaintiffs and members of the
14 Waiting Time Penalty Subclass all earned wages at the end of employment in a timely manner pursuant
15 to the requirements of California Labor Code sections 201-203.

16 134. As a direct and proximate result of Defendants’ failure to pay all wages due upon
17 separation, Plaintiffs and Waiting Time Penalty Subclass Members have suffered damages.

18 135. Defendants’ failure to pay all final wages was willful within the meaning of Labor
19 Code section 203. Defendants’ willful failure to timely pay Plaintiffs and the members of the Waiting
20 Time Penalty Subclass their earned wages upon separation from employment results in a continued
21 payment of wages up to thirty (30) days from the time the wages are due. Therefore, Plaintiffs and
22 members of the Waiting Time Penalty Subclass are entitled to compensation pursuant to California
23 Labor Code section 203.

24 **SEVENTH CAUSE OF ACTION**

25 **FAILURE TO INDEMNIFY EMPLOYEES FOR NECESSARY EXPENSES**

26 **[Cal. Labor Code § 2802; IWC Wage Order No. 14-2001, § 9]**

27 **(Brought by All Plaintiffs Against All Defendants)**

28 136. Plaintiffs, on behalf of themselves and Class Members, re-allege and incorporate by
29.

1 reference all previous paragraphs of this FAC.

2 137. California Labor Code sections 2802, subdivision (a), requires employers to reimburse
3 their employees for all necessary expenditures incurred by the employee in direct consequence of the
4 discharge of their job duties or in direct consequence of their job duties or in direct consequence of
5 their obedience to the directions of the employer.

6 138. IWC Wage Order 14-2001, section (9), subdivision (B), provides that when tools,
7 supplies, or equipment are necessary to the performance of a job, such tools, supplies or equipment
8 shall be provided and maintained by the employer.

9 139. California Labor Code section 558.1, subdivision (a), provides that any employer or
10 other person acting on behalf of an employer, who violates, or causes to be violated, any provision
11 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
12 Commission, or violates, or causes to be violated, among others, California Labor Code section 2802,
13 may be held liable as the employer for such violation. California Labor section 558.1, subdivision (b),
14 defines “other person acting on behalf of an employer” as a “natural person who is an owner, director,
15 officer, or managing agent of the employer.”

16 140. Defendants have failed and continue to fail to provide Plaintiffs and Class Members all
17 tools, supplies and equipment necessary to perform their job duties including, but not limited to plastic
18 boots and gloves.

19 141. By requiring Plaintiffs and Class Members to pay for work-related expenses without
20 reimbursement, Defendants, pursuant to their policy and practice, have violated and continue to violate
21 California Labor Code section 2802 and IWC Wage Order 14-2001, section (9).

22 142. Defendants have intentionally and willfully failed to reimburse Plaintiffs and Class
23 Members for all necessary work-related expenses and costs.

24 143. As a direct and proximate result of Defendants’ failure reimburse Plaintiffs and Class
25 Members for all necessary work-related expenses and costs as required by California law, Plaintiffs
26 and Class Members sustained damages.

27 144. Plaintiffs and Class Members are entitled to recover from Defendants their work-
28 related expenses and costs incurred during the course and scope of their employment plus interest

1 accrued from the date on which the employee incurred the necessary expenditures at the same rate as
2 judgments in civil actions in the State of California. Plaintiffs and Class Members are also entitled to
3 attorney's fees incurred by them in enforcing their rights under California Labor Code section 2802.

4 **EIGHTH CAUSE OF ACTION**

5 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES**

6 **[Cal. Business & Professions Code, §§ 17200 et seq.]**

7 **(Brought by All Plaintiffs Against All Defendants)**

8 145. Plaintiffs, on behalf of themselves and Class Members, re-allege and incorporate by
9 reference all previous paragraphs of this FAC.

10 146. As alleged in this FAC, Defendants' conduct, has been, and continues to be, unfair,
11 unlawful, and harmful to Plaintiffs and Class Members, and to the general public. Plaintiffs seek to
12 enforce important rights affecting the public interest within the meaning of Code of Civil Procedure
13 section 1021.5.

14 147. As alleged in this FAC, Defendants' actions violate California law and constitute
15 unlawful business acts and practices in violation of California Business & Professions Code sections
16 17200 et seq.

17 148. A violation of California Business & Professions Code section 17200 et seq. may be
18 predicated on the violation of any state or federal law. In the present case, Defendants' policy and
19 practice of not paying all regular, overtime, and double-time wages due to Plaintiffs and Class
20 Members violates California Labor Code sections 1194 and 1198; Defendants' policy and practice of
21 requiring Plaintiffs and Class Members to work through their meal and rest periods without paying
22 them proper compensation violates California Labor Code sections 226.7 and 512, subdivision (a);
23 Defendants' policy and practice of not timely paying all wages owed to Plaintiffs and Class Members
24 upon resignation or termination violates California Labor Code sections 201, 202, and 203;
25 Defendants' policy and practice of not fully reimbursing Plaintiffs and Class Members for necessary
26 work-related expenses and costs incurred during their employment violates California Labor Code
27 sections 2800 and 2802; and Defendants' policy and practice of failing to provide accurate itemized
28 wage statements violates California Labor Code section 226. As alleged in this FAC, Defendants'

1 unlawful business acts and practices, involve, but not necessarily limited to the loss of money and/or
2 property.

3 149. Plaintiffs and Class Members have been personally injured. Pursuant to California
4 Business & Professions Code sections 17200 et seq., Plaintiffs and Class Members are entitled to
5 restitution from Defendants of the wages withheld and retained by Defendants during a period that
6 commences four years prior to the filing of this action; a permanent injunction requiring Defendants
7 to pay all outstanding wages due to Plaintiffs and Class Members; an award of attorneys' fees pursuant
8 to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

9 **NINTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE EMPLOYMENT RECORDS**

11 **[Cal. Labor Code, §§ 226(c), 1198.5]**

12 **(Brought Individually by Plaintiffs Adrian Arrillaga, Adrian Arrillaga Hernandez, Griselda**
13 **Hernandez, and Roberto Perez Against All Defendants)**

14 150. Plaintiffs re-allege and incorporate by reference all previous paragraphs of this FAC.

15 151. California Labor Code section 1198.5, subdivision (c)(1) through (3) requires
16 employers to "maintain a copy of each employee's personnel records" and make a current or former
17 "employee's personnel records available for inspection, and, if requested by the employee or his or
18 her representative, provide a copy thereof."

19 152. California Labor Code section 1198.5, subdivision (a), provides: "Every current and
20 former employee, or his or her representative, has the right to inspect and receive a copy of the
21 personnel records that the employer maintains relating to the employee's performance or to any
22 grievance concerning the employee."

23 153. California Labor Code section 1198.5, subdivision (b)(1), requires employers to "make
24 the contents of those personnel records available for inspection to the current or former employee, or
25 his or her representative, at reasonable intervals and at reasonable times, but no later than 30 calendar
26 days from the date the employer receives a written request."

27 154. California Labor Code section 1198.5, subdivision (k), provides that employers who
28 fail to permit a current or former employee to inspect or copy personnel records within thirty (30) days

1 of his or her request are liable for a seven-hundred and fifty dollars (\$750) penalty that is recoverable
2 by the employee in a private right of action or by the Labor Commissioner. A current or former
3 employee also may bring an action for injunctive relief to compel compliance with this section and
4 may recover costs and reasonable attorney's fees in doing so pursuant to subdivision (l).

5 155. California Labor Code section 226, subdivision (a), requires employers to maintain
6 accurate and itemized wage statements that contain the following items: (1) gross wages earned, (2)
7 net wages earned; (3) total hours worked; (4) inclusive dates of the period for which the employee is
8 paid; (5) the number of piece rate units earned; (6) all applicable hourly rates in effect during every
9 pay period and the corresponding number of hours worked at each hourly rate by the employee.

10 156. California Labor Code section 226, subdivision (c), requires employers who receive a
11 written or oral request to inspect or copy these payroll records to comply with the request as soon as
12 practicable, but no later than twenty-one (21) days from the date of the request.

13 157. California Labor Code section 226, subdivision (f), provides that employers who fail
14 to permit a current or former employee to inspect or copy payroll records within twenty-one (21) days
15 of his or her request are liable for a seven-hundred and fifty dollars (\$750) penalty that is recoverable
16 by the employee in a private right of action or by the Labor Commissioner.

17 158. Plaintiff ROBERTO PEREZ requested his personnel and payroll records on May 19,
18 2020. Thereafter, on July 10, 2020, Defendants acknowledged receipt of Plaintiff PEREZ's request.
19 On July 17, 2020, Defendant's Chief Financial Officer, Genny Mesa, informed Plaintiffs' counsel that
20 after a reasonable and diligent search, other than a few sheets summarizing the payments issued to
21 Plaintiff PEREZ, Defendants had no other documents to produce. Ms. Mesa also stated she would
22 "consider [the] request an ongoing obligation to provide any documents that [the Company] might
23 locate in the future." As of the date of this filing, Defendants have provided no additional documents
24 in response Plaintiff PEREZ's payroll and personnel records.

25 159. On July 17, 2020, Plaintiffs' counsel sent three additional requests for employment
26 records to Defendants' CFO Genny Mesa. Plaintiffs' counsel sent these three additional requests on
27 behalf of Plaintiffs ADRIAN ARRILLAGA, ADRIAN ARRILLAGA HERNANDEZ, and
28 GRISELDA HERNANDEZ. Each Plaintiff signed an authorization to release employment records to

1 Plaintiffs' counsel. These authorizations were enclosed in a letter sent to Ms. Mesa by Plaintiffs'
2 counsel requesting payroll and personnel records.

3 160. On July 30, 2020, Defense counsel L. Carmen Ramirez from Kelsey & Ramirez LLP
4 informed Plaintiffs' counsel that her office had been retained to represent Defendants. That same day,
5 Plaintiffs' counsel notified Ms. Ramirez of the outstanding employment records requests sent by
6 Plaintiffs ARRILLAGA, ARRILLAGA HERNANDEZ, and HERNANDEZ. As of the date of this
7 filing, Defendants have provided no responsive documents to these three Plaintiffs. Thus, to date,
8 Defendants have not produced Plaintiffs' employment records as required by California law.

9 161. Defendants violated California Labor Code section 1198.5 by failing to provide
10 Plaintiff's personnel records within thirty (30) days of the initial request for their production.

11 162. Defendants violated California Labor Code sections 226, subdivisions (b) and (c), by
12 failing to provide Plaintiff's payroll records within twenty-one (21) days of the initial request for their
13 production.

14 163. Plaintiffs ADRIAN ARRILLAGA, ADRIAN ARRILLAGA HERNANDEZ,
15 GRISELDA HERNANDEZ, and ROBERTO PEREZ therefore each seek a separate seven-hundred
16 and fifty dollar (\$750) penalty because of Defendants' failures to provide their personnel and payroll
17 records, injunctive relief to compel compliance, and reasonable attorney's fees and costs.

18 **TENTH CAUSE OF ACTION**

19 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")**

20 **[Cal. Lab. Code, §§ 2698, et seq.]**

21 **(Brought by All Plaintiffs Against All Defendants)**

22 164. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

23 165. Defendants have committed various Labor Code violations against Plaintiffs, Class
24 Members, and other aggrieved employees. Plaintiffs, "aggrieved employees" within the meaning of
25 Labor Code section 2698 et seq., acting on behalf of themselves and other aggrieved employees, bring
26 this representative action against Defendants to recover the civil penalties due to Plaintiffs, the Class
27 Members, other aggrieved employees, and the State of California according to proof pursuant to Labor
28 Code section 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for

1 each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional
2 violation pursuant to Labor Code section 210 for each failure to pay each employee, plus 25% of the
3 amount unlawfully withheld; (2) \$100.00 for each initial violation and \$250.00 for each subsequent
4 violation pursuant to Labor Code section 1197.1; (3) \$250.00 for each initial violation and \$1,000.00
5 for each subsequent violation pursuant to Labor Code section 226.3 per employee per pay period; (4)
6 \$50.00 for each initial violation for each underpaid employee for each pay period for which the
7 employee was underpaid in addition to an amount sufficient to recover underpaid wages and \$100.00
8 for each underpaid employee for each pay period for which the employee was underpaid in addition
9 to an amount sufficient to recover underpaid wages pursuant to Labor Code section 558; (5) \$500 for
10 failure to maintain accurate and complete records required by Labor Code section 1174; and/or (6)
11 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
12 period for those violations of the Labor Code for which no civil penalty is specifically provided, based
13 on the following Labor Code violations:

14 a. Defendants violated Labor Code sections 204, 510, 558, 1194, and 1198 by
15 failing to pay Plaintiffs and other aggrieved employees all overtime compensation earned;

16 b. Defendants violated Labor Code sections 1194, 1194.2, and 1197 by failing to
17 pay Plaintiffs and other aggrieved employees the statutory minimum wage for all hours worked;

18 c. Defendants violated Labor Code sections 226.7, 512, 516, and 558 by failing to
19 authorize and permit all legally required meal and rest periods and failing to pay meal and rest period
20 premiums to Plaintiffs and other aggrieved employees;

21 d. Defendants violated Labor Code section 226 by failing to furnish Plaintiffs and
22 other aggrieved employees with accurate and compliant itemized wage statements;

23 e. Defendants violated Labor Code section 204 by failing to pay Plaintiffs and
24 other aggrieved employees all earned wages at least twice during each calendar month;

25 f. Defendants violated Labor Code section 1174 by failing to maintain accurate
26 records on behalf of Plaintiffs and other aggrieved employees; and

27 g. Defendants violated Labor Code sections 201, 202 and 203 by failing to timely
28 pay all final wages due to Plaintiffs and other aggrieved employees; and

1 h. Defendants violated Labor Code section 2802 by failing to indemnify necessary
2 expenditures due to Plaintiffs and other aggrieved employees.

3 166. On July 22, 2020, counsel for Plaintiffs notified Defendants via certified mail, and
4 notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of
5 Defendants’ violations of the California Labor Code and Plaintiffs’ intent to bring a claim for civil
6 penalties under California Labor Code section 2698 et seq. with respect to violations of the California
7 Labor Code. A true and correct copy of Plaintiffs’ letter is attached hereto as **Exhibit 1**. Now that at
8 least sixty-five days have passed from Plaintiffs notifying Defendants and the LWDA of these
9 violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiffs
10 have exhausted their administrative requirements for bringing a claim under the PAGA with respect
11 to these violations.

12 **REQUEST FOR A JURY TRIAL**

13 167. Plaintiffs, on behalf of themselves, all similarly situated hourly, non-exempt
14 employees, and other aggrieved employees in agricultural occupations currently or formerly employed
15 in California by Defendants, hereby demand a jury trial on all causes of action and claims so triable.

16 **PRAYER FOR RELIEF**

17 168. Plaintiffs, on behalf of themselves, all other members of the general public similarly
18 situated, and other aggrieved employees, pray for relief and judgment against Defendants, as follows:

19 a. For certification of the proposed Class, Wage Statement Penalty Subclass, and
20 Waiting Time Penalty Subclass and any other appropriate subclasses under California Code of Civil
21 Procedure section 382;

22 b. For appointment of Adrian Arrillaga, Adrian Arrillaga Hernandez, Griselda
23 Hernandez, and Roberto Perez as the class representatives;

24 c. For appointment of Macias Rodriguez LLP as class counsel for all purposes.

25 d. An award for compensatory damages including, but not limited to, lost wages,
26 unpaid wages, and unreimbursed necessary expenditures and/or losses incurred in direct consequence
27 of Plaintiffs’ discharge of their duties;

28 e. An award for statutory penalties provided by law, including but not limited to

1 those in California Labor Code sections 203, 226, subdivisions (e) and (f), and 1198.5, subdivision
2 (k);

3 f. An award for liquidated damages pursuant to California Labor Code section
4 1194.2, in an amount equal to the unpaid minimum wages;

5 g. Restitution of all amounts owed in unpaid wages, overtime, minimum wage
6 compensation, and unlawful deductions from wages, and interest thereon, pursuant to California
7 Business & Professions Code section 17200 et seq;

8 h. Disgorgement of profits and all other appropriate equitable relief authorized by
9 California Business & Professions Code section 17203;

10 i. For an award of civil penalties due to Plaintiffs, other aggrieved employees, and
11 the State of California according to proof pursuant to Labor Code section 2699;

12 j. Injunctive relief compelling compliance with California Labor Code sections
13 226 and 1198.5;

14 k. Attorneys' fees and litigation expenses pursuant to Labor Code sections 218.5,
15 226, subdivision (h), 1194, subdivision (a), 1198.5, subdivision (l), 2802, 2699, subdivision (g)(1),
16 and California Code of Civil Procedure section 1021.5, and such other provisions as may be
17 applicable;

18 l. Pre-judgment and post-judgment interest on all sums awarded;

19 m. Costs of suit; and

20 n. For such other and further relief as is equitable, just, and proper.

21
22 Dated: December 7, 2020

23
24 

25 _____
26 JOSE MACIAS, JR.
27 HECTOR RODRIGUEZ
28 TRAVIS M. ADAMS

MACIAS RODRIGUEZ LLP
Attorneys for Plaintiffs

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EXHIBIT 1
NOTICE TO LWDA



Macías Rodríguez LLP
— ATTORNEYS AT LAW —

Macías Rodríguez LLP
1550 The Alameda, Suite 332
San Jose, CA 95126

Jose Macias, Jr.
408.455.6386 direct
408.455.1243 main
jose@maciasrodriguez.com

July 22, 2020

VIA ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA CERTIFIED MAIL

ATTN: Genny Marie Mesa
CFO and Agent For Service of Process
Mininger Farms, Inc.
3253 Mariner Court
Atwater, CA 95301

**Re: NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO THE PRIVATE
ATTORNEY GENERAL ACT (LABOR CODE SECTION 2699.3)**

Dear Administrator:

This office represents Adrian Arrillaga, Adrian Arrillaga Hernandez, and Griselda Hernandez Herrera (hereinafter, "Claimants") in connection with their claims under the California Labor Code. Claimants were employees of Mininger Farms, Inc. (hereinafter, "Mininger" or "Company").

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

Mininger employed Claimants as non-exempt, hourly-paid general field laborers from March 2019 through August 2019. For most of their employment, Claimants worked for Mininger at its Livingston, California farming headquarters, located at 2870 Robin Avenue, Livingston, CA 95334.

Claimants regularly worked more than nine-and-a-half (9.5) hours per day and more than fifty-five (55) hours per week. Claimants performed work in agricultural occupations engaged in

various duties related to farming, including irrigation, harvesting, planting, sowing, pruning, and weed control, among others.

During their employment, Mininger committed one or more of the following Labor Code violations against Claimants, the facts and theories of which follow, making them "aggrieved employees" pursuant to California Labor Code section 2699, subdivision (c).

Mininger's Company-Wide and Uniform Payroll and HR Practices

Mininger is a California Limited Liability Corporation, with its principal place of business and corporate headquarters located in Merced, California. Mininger operates a large agricultural operation dedicated to the farming of sweet potatoes in the Counties of Merced and Stanislaus. On information and belief, Mininger farms over one thousand (1,000) acres of land in any given yearly harvest season. Additionally, Mininger also is engaged in direct sales of sweet potatoes to individuals and supermarket chains throughout the State of California. Mininger employs a large workforce of employees in agricultural and non-agricultural occupations to carry out all its operations from field to market.

Upon information and belief, Mininger maintains a centralized Human Resources (HR) department at its corporate headquarters in Merced, California, which implements uniform, standardized policies and practices affecting all of its non-exempt, hourly-paid employees in California, including Claimants and other aggrieved employees. At all relevant times, Mininger issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly-paid employees in California, including Claimants and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and Industrial Welfare Commission ("IWC") Wage Orders No. 8 (Industries Handling Products After Harvest) and No. 13 (Industries Preparing Agricultural Products for Market, On the Farm) require employers to pay employees working more than eight (8) hours in a workday or more than forty (40) hours in a workweek at the rate of one and a half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. IWC Wage Orders 8-2001 and 13-2001 further provide that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An

employee's regular rate of pay includes all compensation for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

Moreover, IWC Wage Order No. 14-2001 provides that for employers of more than twenty-five (25) employees, starting January 1, 2019, an employee shall not be employed more than nine and one-half (9.5) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1.5) times such employee's regular rate of pay for all hours worked over nine and one-half (9.5) hours in any one workday or more than fifty-five (55) hours in any one workweek. In addition, this Order provides that for employers of more than twenty-five (25) employees, starting January 1, 2020, an employee shall not be employed more than nine (9.0) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1.5) times such employee's regular rate of pay for all hours worked over nine (9.0) hours in any one workday or more than fifty (50) hours in any one workweek. It also provides that for employers of more than twenty-five (25) employees, starting January 1, 2021, an employee shall not be employed more than eight and one-half (8.5) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1.5) times such employee's regular rate of pay for all hours worked over eight and one-half (8.5) hours in any one workday or more than forty five (45) hours in any one workweek. Lastly, IWC Wage Order No.14-2001 provides that for employers of more than twenty-five (25) employees, starting January 1, 2022, an employee shall not be employed more than eight (8.0) hours per workday or forty (40) hours per workweek unless the employee receives one and one-half (1.5) times such employee's regular rate of pay for all hours worked over eight (8.0) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

Mininger willfully failed to pay all overtime wages owed to Claimants and other aggrieved employees. During the relevant time period, Claimants and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of the applicable thresholds outlined in the applicable IWC Wage Orders for employees in agricultural occupations (2019: nine-and-a-half (9.5) hours in a day and/or in excess of fifty-five (55) hours in a week; 2020: nine (9) hours in a day and forty-five (45) hours in a week); employees preparing agricultural products for market on the farm (eight (8) hours in a day and/or in excess of forty (40) hours in a week); and for employees handling products after harvest (eight (8) hours in a day and/or in excess of forty (40) hours in a week).

First, Mininger had, and continues to have, a Company-wide policy and/or practice of not compensating agricultural employees for the time spent preparing the materials and tools needed for the workday, as well as, for the time spent walking from the farming headquarters to the pest-controlled fields. Agricultural employees generally had to report to work each day at a yard in Livingston, California. They reported as instructed by Mininger's supervisors, some as early as 5:30 a.m. or 6:00 a.m., depending on the day, to prepare various items needed for the workday. At all times from the point that the workers arrived at the yard each morning, they were under the direction and control of Mininger. After gathering supplies and needed items, Mininger compelled all its agricultural employees to walk to their assigned pest-controlled fields every morning. Mininger did not compensate any of its employees for the time spent walking to the fields. Similarly, Mininger did not compensate any of its employees for the time spent walking

from the fields back to the yard at the end of the workday. Mininger deemed the workday to end while the workers were still on the field. Due to this Company-wide policy and/or practice, Mininger willfully failed to pay countless hours of overtime to its agricultural employees.

Second, Mininger had, and continues to have, a Company-wide policy and/or practice of not allowing agricultural employees to complete their own timecards. Instead, the field supervisors would dictate to the agricultural employees the specific time they were to enter for start time, meal period, and end time. This Company-wide policy and/or practice resulted in a deprivation of hours worked, including overtime hours worked.

Third, Mininger consistently understaffs its operations to maximize profits. This practice has resulted in chronic understaffing, such that there were too few employees on duty to handle the workload and provide uninterrupted meal break coverage. Thus, Claimants and other aggrieved employees were not provided adequate meal break coverage to allow them to be relieved of their duties for compliant meal breaks. Indeed, Claimants and other aggrieved employees were regularly interrupted, and forced to work during their respective meal breaks – forcing them to work without pay. Mininger knew or should have known that these Company policies were unlawful. Additionally, the Company should have known that as a result of these Company-wide practices and/or policies, Claimants and other aggrieved employees were performing assigned duties during their meal periods, and thereby performing work for which they were not paid. Mininger also knew, or should have known, that it did not compensate Claimants and other aggrieved employees for this off-the-clock work. Because they and other aggrieved employees regularly worked shifts of nine-and-a-half (9.5) hours a day or more or fifty-five (55) hours a week or more in 2019 and shifts of nine (9.0) hours a day or more or fifty (50) hours a week or more in 2020, some of this off-the-clock work performed during unpaid meal periods qualified for overtime premium pay.

Fourth, Mininger liberally moves agricultural employees to perform duties in its Merced warehouse and its different ranches and fails to pay them the proper overtime premiums for the non-agricultural work performed. This scheme is carried out in a systematic manner, and only certain agricultural employees at a time, are moved to work in non-agricultural activities for limited periods of times (1-3 days per occurrence). Mininger's scheme has the intended desire of circumventing California's wage and hour laws in order to maximize profits.

Accordingly, Claimants and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. Mininger's failure to pay Claimants and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Claimants and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699, subdivisions (a), and (f) through (g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum fixed is unlawful. Compensable work time is defined by the applicable Wage Order 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.”

As stated above, due to Mininger’s Company-wide policy of not compensating employees for the time spent walking from the Livingston yard to the fields at the start of the workday and from the fields to the Livingston yard at the end of the workday, agricultural employees performed daily off-the-clock work. This practice was further compounded by the fact that supervisors dictated start and end times to employees and by the fact that Mininger did not maintain or adopt a reliable timekeeping system.

Mininger also did not pay minimum wages for meal periods and other off-the-clock hours that Claimants and other aggrieved employees worked through that qualified for overtime premium payment. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Mininger did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, Mininger regularly failed to pay at least minimum wages to Claimants and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Claimants and other aggrieved employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1197.1 and/or 2699, subdivisions (a), and (f) through (g).

Violation of California Labor Code Sections 226.7, 512(a), and 1198 - Failure to Provide Meal Periods

California Labor Code sections 226.7, 512, subdivision (a), and 1198 and the applicable IWC Wage Orders require employers to provide meal and rest breaks and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512, subdivision (a), and the applicable IWC Wage Orders, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

Under California law, first meal periods must start before the end of the fifth hour of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1041-1042.). Labor Code sections 226.7 and 512, subdivision (a), and the applicable IWC Wage Orders also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee’s regular

rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, Mininger has, and continues to have, a Company-wide policy and/or practice of understaffing locations that resulted in a lack of meal break coverage and prevented other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Claimants and other aggrieved employees had to wait for management to authorize them to go on their meal breaks. As a result of Mininger's practices and/or policies, the layout of their agricultural operations, and the absence of accurate time keeping devices, Claimants and other aggrieved employees had to: 1) work through part or all of their meal periods; 2) had their meal breaks cut short by walking from the pest-controlled fields to the Livingston yard to eat their lunch; 3) had their meal periods interrupted by walking from the Livingston yard back to the fields; and/or 4) waited extended periods of time before being allowed to take meal periods. Further, on information and belief, Mininger did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Aggrieved employees did not sign valid meal break waivers on days that they were entitled to meal periods and were not relieved of all duties.

Mininger knew or should have known that as a result of its policies, including understaffing, layout of its agricultural operations, lack of time clocks, and failure to provide meal periods, that other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. Mininger further knew or should have known that they did not pay other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Mininger also has engaged in a Company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Claimants and other aggrieved employees have not received premium pay for missed meal periods.

Accordingly, Mininger failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, and 1198. Claimants and other aggrieved employees are therefore entitled to penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699, subdivision (a), and (f) through (g).

Violation of California Labor Code Sections 226.7 and 1198 - Failure to Provide Rest Periods

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

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

As with meal periods, Mininger’s Company-wide policy and practice of understaffing and resulting lack of break coverage prevented Claimants and other aggrieved employees from being relieved of all duty to take compliant rest periods. They and other aggrieved employees had to wait for management to authorize them to go on their rest breaks and were often prevented from doing so. Claimants were frequently not permitted to take full and complete ten (10) minute rest periods, and instead would miss their rest periods or have their rest periods interrupted to meet the production demands. In fact, Claimants and other aggrieved employees were regularly prevented from going to the restroom during their shifts and were informed by management to wait for a break since the restrooms were located far away from their exact work locations.

Additionally, Mininger regularly failed to provide aggrieved employees with second 10-minute rest periods on days that they worked in excess of six (6) hours in one day, and with third 10-minute rest periods on days they worked in excess of ten (10) hours in one day. Accordingly, Claimants and other aggrieved employees were regularly deprived of compliant second and third rest breaks and were not provided with additional compensation when forced to work during their rest breaks.

As a result of Mininger’s practices and policies, Claimants and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled.

Mininger also has engaged in a Company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not provided. Because of this practice and/or policy, Claimants and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, Mininger failed to provide all rest periods in violation of California Labor Code sections 226.7, 512, and 1198. Claimants and other aggrieved employees are therefore entitled to penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code sections 558 and 2699, subdivisions (a), and (f) through (g).

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

California Labor Code section 226, subdivision (a), requires employers to make, keep and provide true, accurate, and complete employment records. Mininger has not provided Claimants and other aggrieved employees with properly itemized wage statements. Labor Code section 226, subdivision (e), provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226, subdivision (a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to

exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226, subdivision (a), shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to section 226, subdivision (a).

Mininger has knowingly and intentionally provided Claimants and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. Specifically, Mininger violated sections 226, subdivisions (a)(1), (2), (5), (8), and (9). Mininger deducted time worked from other aggrieved employees' wage statements and employment records for meal periods that were interrupted or missed (and therefore time for that they should have been paid), and did not record time Claimants and other aggrieved employees spent working off the clock, the result of which was an unlawful deduction of wages earned and meal period premiums that should have been paid. The wage statement deficiencies also include, among other things, failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock – including the time spent walking to/from the agricultural fields at the beginning and end of their shift. Thus, Mininger did not furnish wage statements to Claimants and other aggrieved employees containing accurate totals of the hours worked (Lab. Code, § 226, subd. (a)(2)), number of hours worked at each hourly rate (Lab. Code, § 226, subd. (a)(9)), net wages earned (Lab. Code, § 226, subd. (a)(5)) and gross wages earned (Lab. Code, § 226, subd. (a)(1)).

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Orders, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Mininger failed, on a Company-wide basis, to keep accurate records of work period start and stop times for Claimants and other aggrieved employees, in violation of section 1198.

Because Mininger failed to provide the accurate number of total hours worked on wage statements, Claimants and other aggrieved employees have been prevented from verifying, solely

from information on the wage statements themselves, that they were paid correctly and in full. Instead, they and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Claimants and other aggrieved employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon pursuant to Labor Code sections 226, subdivision (e), 226.3, 1174.5, and/or 2699, subdivisions (a), and (f) through (g).

Violation of California Labor Code Section 204 - Failure to Timely Pay Wages During Employment

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

During the relevant time period, Mininger failed to pay Claimants and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Claimants and aggrieved employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699, subdivisions (a), and (f) through (g).

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

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

On information and belief, Mininger has a Company-wide practice or policy of not paying departing employees their final wages on their final day of employment or within seventy-two (72) hours of resigning without prior notice, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202.

Additionally, Mininger willfully failed to pay aggrieved employees who are no longer employed by Mininger all their earned wages, including, but not limited to, overtime wages and minimum wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Mininger employ in violation of California Labor Code sections 201, 202, and 203.

Claimants and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699, subdivisions (a), and (f) through (g).

Violation of California Labor Code § 2802 - Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage orders provide that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, Mininger required that employees purchase weatherproof overalls, plastic boots, and gloves. Mininger could have provided Claimants and other aggrieved employees with these necessary items for use on the job. Instead, Mininger passed these operating costs off onto Claimants and other aggrieved employees. Mininger had, and continues to have, a Company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred. At all relevant times, Claimants did not earn at least two (2) times the minimum wage.

Mininger policy and/or practice of passing its operating costs on to Claimants and other aggrieved employees by requiring that they purchase their own uniforms is in violation of California Labor Code section 2802. Claimants and other aggrieved employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code section 2699, subdivisions (f) through (g).

Violation of California Labor Code § 2810.5(a) — Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claimed as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to

section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

On information and belief, Mininger failed to provide Claimants and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5, subdivision (a)(1)(A) through (C). Mininger's failure to provide them with written notice of basic information regarding their employment is in violation of Labor Code section 2810.5. Claimants and other aggrieved employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code section 2699, subdivision (a), and (f) through (g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Follow Procedures for Heat Illness Prevention and Failure to Provide Personal Protective Equipment

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. For agricultural employers, this entails abiding by Title 8, section 3395 of the California Code of Regulations, which outlines procedures for heat illness prevention.

Generally, "heat illness" refers to a serious medical condition resulting from the body's inability to cope with a particular heat load, and includes heat cramps, heat exhaustion, heat syncope and heat stroke. In order to prevent heat illness, California employers must provide access to shade when the temperatures in the field exceed eighty (80) degrees Fahrenheit. Moreover, California employers must have "high-heat" procedures, for when the temperatures in the fields exceed ninety-five (95) degrees Fahrenheit. These procedures include, but are not limited to, ensuring effective communication, observing employees for alertness and signs of heat illness, implementing a buddy system, reminding employees to drink plenty of water and providing access to potable drinking water to employees out in the fields.

The Code of Regulations also explicitly states that agricultural employers "**shall ensure that the employee takes a minimum ten-minute net preventative cool-down rest period every two hours.**" Notably, the Code of Regulations also provides that "if the workday extends beyond ten hours, then another preventative cool-down rest period will be required at the conclusion of the tenth hour and so on." Lastly, the Code of Regulations makes it clear that preventative cool-down rest periods have the same meaning as "recovery period" in Labor Code section 226.7, subdivision (a).

Mininger, on a Company-wide basis, failed to take measures to prevent heat illness in the workplace, including failing to provide cool-down rest periods, failing to provide water to workers in the field, and/or shade to allow a natural cool-down process. As a result of Mininger's failures, numerous employees suffered the effects of heat illness and fainted in the fields. This occurred with regularity, and supervisors did nothing to prevent damage to the health of Mininger's agricultural workers.

Additionally, Mininger failed to provide aggrieved employees with personal protective equipment to keep them safe in the workplace. The temperature in the agricultural fields where Claimants worked reached very cold temperatures in the early hours of the day. Moreover, these field workers were often exposed to light showers and rain. In fact, on several occasions, Mininger forced employees to work through rain showers, exposing them to lightning and to potential illnesses. These conditions forced employees to purchase warm protective equipment out of their own funds. Mininger failed to provide such reasonably necessary equipment to aggrieved employees to keep them safe.

Mininger's failures, as outlined above, violated Labor Code sections 226.7, subdivision (a), 6401 and 6403. Claimants and other aggrieved employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code section 2699, subdivisions (f) through (g).

Violation of California Labor Code § 558(a)

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

Accordingly, Claimants seek the remedies set forth in Labor Code section 558 for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699, subdivision (a), 2699.3, subdivision (a), and 2699.3, subdivision (c), 2699.5, and 558, Claimants, acting in the public interest as private attorney generals, seek assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Mininger for violations of California Labor Code sections 201, 202, 203, 204, 221, 224, 226, subdivision (a), 226.7, 510, 512, subdivision (a), 1174, subdivision (d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Claimants seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

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

Macias Rodriguez LLP
1550 The Alameda, Suite 332
San Jose, CA 95126

LWDA
July 21, 2020
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Sincerely,

A handwritten signature in blue ink, appearing to read "J Macias", written in a cursive style.

Jose Macias, Jr.
Managing Partner