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Attorneys for Plaintiff JOSE A. GUEVARA,
and aggrieved employees

SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN

JOSE A. GUEVARA, an individual, on behalf
of himself, all others similarly situated, and the
state of California

Plaintiffs,

vs.

OFR, INC., a California corporation; and
DOES 1-50,

Defendants.

Case No. BCV-21-100011

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

1 Plaintiff Jose A. Guevara (“PLAINTIFF”), on behalf of himself and other similarly
2 aggrieved employees of Defendant OFR, Inc. (“OFR”), and on behalf of the State of California,
3 hereby complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action by PLAINTIFF on behalf of himself, other
6 similarly aggrieved employees, and the State of California against defendant OFR and Doe
7 Defendants 1-50 (collectively, “DEFENDANTS”) pursuant to the California Private Attorney
8 General Act, Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties (75%
9 payable to the Labor Workforce Development Agency (“LWDA”) and 25% payable to aggrieved
10 employees) for failure to keep accurate records, failure to pay all minimum and overtime wages,
11 failure to provide adequate meal and rest breaks, failure to pay meal and rest break premiums,
12 failure to issue accurate wage statements, and failure to timely pay all wages upon cessation of
13 employment to DEFENDANTS’ agricultural workers it assigns to work at farms throughout
14 California.

15 **JURISDICTION AND VENUE**

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

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

22 **PARTIES**

23 4. Defendant OFR, Inc., is a California corporation with its principal place of
24 business located at 1607 Simpson Street, Kingsburg, California 93631. OFR, Inc. is a farm labor
25 contractor that employs agricultural workers and assigns them to work at farms throughout the
26 state of California, including in Kern County. Oscar Fausto Ramos established OFR, Inc., in
27 2000. According to the company’s Statement of Information filed with the California Secretary
28

1 of State, Oscar Fausto Ramos serves on the company's Board of Directors, and serves as the
2 company's Chief Executive Officer, Secretary, Chief Financial Officer, and agent for service of
3 process.

4 5. Plaintiff Jose A. Guevara is a resident of California. Defendant OFR, Inc.
5 employed PLAINTIFF as a non-exempt hourly-paid employee from early 2019 until November
6 2019. PLAINTIFF's work included picking and pruning pomegranate trees and grapevines at
7 various farms, including in Kern County. Furthermore, PLAINTIFF's employment with
8 DEFENDANTS was within the one-year period before PLAINTIFF gave notice of his claims to
9 Defendant OFR and the State of California.

10 6. Upon information and belief, Defendant OFR, Inc. has been the employer of
11 PLAINTIFF and similarly aggrieved individuals.

12 7. PLAINTIFF is informed and believes that DOES 1 through 50 are corporations,
13 individuals, limited liability partnerships, limited liability companies, general partnerships, sole
14 proprietorships or are other business entities or organizations of a nature not currently known to
15 PLAINTIFF.

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

22 9. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein
23 mentioned each Defendant, including all Defendants sued under fictitious names, was the
24 employee, or representative of each of the remaining Defendants, and in doing the things
25 hereinafter alleged, was at times acting within the course and scope of this employment, and at
26 other times, acting in his or her own individual capacity. In the alternative, each of the
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1 individually named Defendants, acted in concert and in furtherance of a fraudulent plan and
2 scheme and each actively participated in the wrongful acts alleged in this complaint.

3 **FACTUAL BACKGROUND**

4 10. At all times during the liability period, DEFENDANTS employed PLAINTIFF
5 and other similarly employed individuals to perform services at farms throughout the state of
6 California, including in Kern County.

7 **Failure to Keep Accurate Records**

8 11. DEFENDANTS employed PLAINTIFF and other similarly situated non-exempt
9 hourly-paid individuals subject to Section 7 of Industrial Welfare Commission (“IWC”) Wage
10 Order 14, which provides in relevant part:

11 Every employer shall keep accurate information with respect to each
12 employee including the following... (3) Time records showing when the
13 Employee begins and ends each work period. Meal periods, split shift
14 intervals and total daily hours worked shall also be recorded...

15 12. At all relevant times during the liability period, DEFENDANTS maintained time
16 records that show only when an employee begins and ends a shift. DEFENDANTS’ time records
17 do not show when employees took a meal period, if any. Attached hereto as **Exhibit A** is a true
18 and correct copy of DEFENDANTS’ time records for the week of November 4 – November 10,
19 2019. The time records, including PLAINTIFF’s time records, show that DEFENDANTS failed
20 to keep accurate records of employee’s meal periods, thereby violating Section 7 of the
21 applicable wage order, including Wage Order 14.

22 **Failure to Pay All Minimum and Overtime Wages**

23 13. At all times during the liability period, PLAINTIFF and other similarly employed
24 individuals were entitled to receive minimum wages for all hours worked.

25 14. DEFENDANTS failed to pay all wages for all hours worked in violation of Labor
26 Code Section 1197 and Wage Order 14. PLAINTIFF and other similarly employed individuals
27 were required to begin work ten to fifteen minutes before their scheduled shift time in order to
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1 get their tools for the day, including gloves, scissors, buckets, and a ladder. However,
2 PLAINTIFF and other similarly employed individuals were only paid from the start of their
3 scheduled shift time. DEFENDANTS did not pay all minimum and overtime wages PLAINTIFF
4 and other similarly employed individuals were owed for the time they spent performing work
5 during this unrecorded pre-shift time.

6 15. Starting January 1, 2019, pursuant to the applicable wage order, including Wage
7 Order 14, PLAINTIFF and all similarly employed individuals were entitled to overtime wages
8 payable at the rate of at least one and one-half times their regular rate of pay for all work more
9 than 9 ½ hours in one workday or more than fifty-five hours in one workweek. As of January 1,
10 2020, PLAINTIFF and all similarly employed individuals are entitled to overtime wages payable
11 at the rate of at least one and one-half times their regular rate of pay for all work more than 9
12 hours in one workday or more than fifty hours in one workweek. As of January 1, 2021, Plaintiff
13 and all similarly employed individuals are entitled to overtime wages payable at the rate of at
14 least one and one-half times their regular rate of pay for all work more than 8 ½ hours in one
15 workday or more than 45 hours in one workweek.

16 16. DEFENDANTS only paid these employees for their scheduled shift time and did
17 not pay for the unscheduled work that DEFENDANTS required them to perform before the start
18 of their shift, as described above, which should have been paid at the employees' overtime rate
19 when they worked over 9 ½ hours in a day in 2019 or over 9 hours in a day in 2020. In addition,
20 as discussed below, DEFENDANTS did not provide meal periods on all shifts. On days
21 PLAINTIFF and other similarly employed individuals were deprived of a meal period,
22 DEFENDANTS still deducted 30 minutes of time from the employees' pay as if they had taken a
23 meal period. This unpaid work time should have been paid at no less than the minimum wage or
24 at the employees' overtime rate on days the employee worked more than 9 ½ hours in 2019 and
25 on days the employee worked more than 9 hours in 2020. Therefore, DEFENDANTS failed to
26 pay PLAINTIFF and other similarly employed individuals all overtime wages owing in violation
27 of the applicable Wage Order, including Wage Order 14 and Labor Code section 510.

1 **Late and Missed Meal Periods**

2 17. Labor Code § 512 generally requires that employees working shifts of more than
3 five hours be provided with a meal period within first five hours of work, and that employees
4 working shifts of more than ten hours be provided with a second meal period. Lab. Code. § 512;
5 *see also* Section 11 of the applicable Wage Orders, including Wage Order 14. Employees are,
6 therefore, entitled to one additional hour of pay at the employee's regular rate of pay for every
7 day that a meal period is not provided or is provided late. *See Id*; Lab. Code § 226.7(c).

8 18. During PLAINTIFF's employment, DEFENDANTS regularly failed to provide,
9 authorize, and/or permit meal periods within the first five hours of work and failed to provide a
10 second meal period on shifts that lasted more than ten hours to PLAINTIFF and other similarly
11 employed individuals, as required by California law.

12 19. During the last year, PLAINTIFF and other non-exempt hourly-paid employees
13 were required to work shifts lasting over five hours, entitling them to a meal break. PLAINTIFF
14 and other similarly situated hourly employees typically worked more than six hours in a
15 workday, and therefore, were not able to waive their first meal periods.

16 20. PLAINTIFF and other similarly situated hourly employees took their meal breaks
17 at the direction of their crew leaders. DEFENDANTS regularly and systematically required
18 PLAINTIFF to work a full shift without a meal period. Time records provided by
19 DEFENDANTS only show the total hours worked by PLAINTIFF and other similarly situated
20 employees on a particular day. DEFENDANTS' time records do not show when PLAINTIFF or
21 other similarly situated employees were released for a meal period. PLAINTIFF estimates that at
22 least twice a week, PLAINTIFF was not provided with a meal period on shifts lasting more than
23 five hours due to the amount of work he and other similarly situated employees were required to
24 complete. Also, on shifts where a meal break was provided exactly five hours after the start of a
25 shift, the meal break was late due to the 10 to 15 minutes of off-the-clock work PLAINTIFF and
26 other similarly situated hourly employees were required to perform before their shift start time.
27 In other words, those meal breaks were late by 10 to 15 minutes. DEFENDANTS failed to pay
28

1 PLAINTIFF a meal period premium for each late or missed meal period as required by Labor
2 Code § 226.7.

3 **Missed Rest Breaks**

4 21. Under Labor Code § 226.7 and the applicable wage order, including Wage Order
5 14, Plaintiff and all similarly employed individuals were entitled to paid rest periods of at least
6 10 minutes for each work period of four hours or a major portion of 4 hours, and one hour of
7 additional pay for every day a paid rest period was not authorized or permitted. In *Brinker*
8 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1029 (2012), the California Supreme Court
9 interpreted the law to require that “[e]mployees are entitled to 10 minutes’ rest for shifts from
10 three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10
11 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” When working for
12 DEFENDANTS, including during the one-year period before PLAINTIFF notified
13 DEFENDANTS and the LWDA of his claims, DEFENDANTS regularly failed to provide and
14 make available to PLAINTIFF his first and second rest periods in compliance with California
15 law. When PLAINTIFF worked over 10 hours, DEFENDANTS did not make available a third
16 rest period. In fact, DEFENDANTS regularly and systematically required PLAINTIFF to work a
17 full shift without any rest periods.

18 22. DEFENDANTS failed to pay rest break premium wages, as required by
19 California Labor Code §226.7.

20 **Inaccurate Wage Statements**

21 23. PLAINTIFF and similarly employed Californians received wage statements that
22 did not list all hours worked including off-the-clock hours, and did not list all wages earned,
23 including the minimum wages, overtime wages, and meal and rest break premiums as discussed
24 above and required by Labor Code § 226.

25 24. Throughout the period applicable to this cause of action, DEFENDANTS
26 knowingly and intentionally failed to furnish to PLAINTIFF and all similarly employed
27 Californians upon each payment of wages, itemized and accurate statements. Statements which
28

1 should have included the accurate amount of net and gross wages earned each pay period,
2 including premium wages, and all applicable hourly rates in effect and the corresponding number
3 of hours worked at each rate.

4 **Unpaid Final Wages**

5 25. At times material hereto the employment of PLAINTIFF and other aggrieved
6 employees by DEFENDANTS ended by discharge or resignation. Upon such discharges and/or
7 resignations, PLAINTIFF (and other aggrieved employees) did not timely receive all wages they
8 were owed as required by Labor Code Section 201 and 202.

9 26. DEFENDANTS, in violation of Labor Code 201, do not, as a matter of practice,
10 immediately pay the aggrieved employees' final wages when terminations or other forms of
11 discharge occur, including discharges that occur at the end of a season, typically paying the
12 employee many days late. DEFENDANTS' conduct in this regard is willful.

13 27. DEFENDANTS' failure to pay all wages earned to PLAINTIFF and others whose
14 employment has ceased, whether by termination (including seasonal discharges) or resignation,
15 in accordance with Labor Code Sections 201 and 202 was willful. DEFENDANTS had the
16 ability to timely pay all wages earned by employees in accordance with Labor Code Sections 201
17 and 202, but intentionally adopted policies or practices incompatible with the requirements of
18 Labor Code Sections 201 and 202.

19 28. Pursuant to Labor Code Section 203, PLAINTIFF and others whose employment
20 with DEFENDANTS has ceased are entitled to continuation of their wages, from the day their
21 earned and unpaid wages were due upon termination or resignation until paid, up to a maximum
22 of 30 days. DEFENDANTS did not comply with their obligations under Labor Code Section
23 203.

24 **COMPLIANCE WITH NOTIFICATION REQUIREMENTS**

25 29. On October 30, 2020, PLAINTIFF, through his counsel, sent a certified letter to
26 the California Labor and Workforce Development Agency ("LWDA") informing it that
27 defendant OFR, Inc. had several labor code violations and failed to meet numerous obligations
28

1 under California law. Attached hereto as **Exhibit B** is a true and correct copy of the October
2 30, 2020 letter (“PAGA Letter”) also sent to Defendant OFR, Inc. at its office of its Agent for
3 Service of Process.

4 30. To date, more than 65 days after the October 30, 2020 PAGA Letter was mailed,
5 the LWDA has not responded.

6 31. The PAGA Letter outlined PLAINTIFF’s claims for violations of the California
7 Labor Code and the applicable wage orders on behalf of himself, the State of California and
8 other aggrieved employees.

9 32. Accordingly, PLAINTIFF exhausted administrative remedies as required by
10 Labor Code § 2699.3.

11 **FIRST CAUSE OF ACTION**

12 **CIVIL PENALTIES UNDER PAGA**

13 **(By PLAINTIFF, Aggrieved Employees, and the State of California against**
14 **DEFENDANTS)**

15 33. PLAINTIFF incorporates all of the foregoing paragraphs of this complaint as if
16 fully alleged herein.

17 34. Under the Private Attorney General Act, Labor Code §§ 2698-99 (“PAGA”),
18 private parties may recover civil penalties for violations of the California Labor Code, including
19 sections 510, 512, 1194, 1197, 201, 202, 203, 226, 226.7 and the applicable Industrial Welfare
20 Commission’s (“IWC”) Wage Orders, including IWC Wage Order 14. PAGA penalties are in
21 addition to any other relief available under the Labor Code.

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

25 36. At all times relevant to this action, PLAINTIFF and other aggrieved employees
26 were employees of DEFENDANTS entitled to the benefits of the IWC Wage Orders, including
27 Wage Order 14.

1 37. Pursuant to the applicable Wage Order, including Wage Order 14 section 7,
2 DEFENDANTS were required to keep accurate records of all hours worked, including meal
3 periods and total daily hours worked. DEFENDANTS failed to record off-the-clock work
4 completed before the beginning of a shift and failed to record meal periods, thereby violating
5 section 7 of the applicable wage order. *See* Exhibit A hereto.

6 38. At all times relevant hereto, California Labor Code §§ 1194(a) and 1197 and the
7 applicable wage orders, including Wage Order 14, required DEFENDANTS to pay their
8 employees the applicable minimum wage for all hours worked.

9 39. During the relevant period, DEFENDANTS did not pay PLAINTIFF and other
10 aggrieved employees the applicable minimum wage for all hours worked because
11 DEFENDANTS required PLAINTIFF and other hourly-paid non-exempt employees to perform
12 unpaid off-the-clock work before the start of a shift as alleged above.

13 40. At all relevant times, PLAINTIFF and the other aggrieved employees were
14 employees of DEFENDANTS covered by Labor Code Sections 510 and 1194 and the applicable
15 wage orders, including Wage Order 14.

16 41. By failing to correctly pay PLAINTIFF and the other aggrieved employees for all
17 overtime hours worked, including by failing to pay for off-the-clock work that DEFENDANTS
18 required them to perform before the start of their shift, DEFENDANTS willfully breached their
19 obligation to pay overtime wages, violating the provisions of Labor Code sections 510 and 1197
20 and the applicable wage orders, including Wage Order 14.

21 42. Likewise, by depriving PLAINTIFF and other aggrieved employees of a meal
22 period and deducting 30 minutes of time from their pay as if they had taken a meal period,
23 DEFENDANTS failed to pay all hours worked including hours that should have been paid at the
24 minimum wage rate and hours that should have been paid at the non-exempt hourly-paid
25 employees' overtime rate. DEFENDANTS willfully breached their obligation to pay minimum
26 and overtime wages, violating the provisions of Labor Code sections 510 and 1197 and the
27 applicable wage orders, including section 3 of Wage Order 14.

43. At all relevant times, PLAINTIFF and other aggrieved employees were employees of DEFENDANTS covered by the meal period provisions of Labor Code Sections 226.7 and 512, and the applicable wage orders, including Wage Order 14.

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

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

46. DEFENDANTS also failed to provide a second meal period on shifts that lasted more than ten hours, as required by Labor Code Section 226.7 and 512.

47. DEFENDANTS failed to provide PLAINTIFF and other aggrieved employees with premium pay – an additional hour of pay at the employee’s regular rate of pay as required by Labor Code Section 226.7 for the meal period violations alleged herein. PLAINTIFF is informed and believes and thereon alleges that at all relevant times within the relevant period, DEFENDANTS maintained and continue to maintain a policy or practice of not paying additional pay to employees for meal period violations.

48. At all relevant times, PLAINTIFF and other similarly aggrieved employees were entitled to rest periods, as required by Labor Code Section 226.7 and the applicable wage order, including Wage Order 14.

49. DEFENDANTS failed to provide and make available to PLAINTIFF his first and second rest period on shifts that lasted longer than six hours. When PLAINTIFF worked more than ten hours, DEFENDANTS did not make available a third rest period. PLAINTIFF is informed and believes and thereon alleges that at all relevant times within the relevant period,

1 DEFENDANTS maintained and continue to maintain a policy or practice of not paying an
2 additional hour of pay at the employees' regular rate of pay for rest period violations.

3 50. PLAINTIFF and similarly aggrieved employees received wage statements that did
4 not list all hours worked and all wages earned, including minimum wages, overtime wages, and
5 meal and rest break premium wages, as required by Labor Code Section 226. PLAINTIFF and
6 similarly aggrieved employees were entitled to receive accurate wage statement that listed all
7 hours worked and all wages earned, including premium wages. DEFENDANTS failed to provide
8 accurate wage statements to PLAINTIFF and their non-exempt hourly-paid employees, and
9 therefore, owe penalty payments pursuant to Labor Code Section 226.

10 51. PLAINTIFF and the other similarly aggrieved employees were non-exempt
11 hourly-paid employees of DEFENDANTS covered by Labor Code Section 201 and 202 whose
12 employment ended during the relevant period.

13 52. Pursuant to Labor Code Section 201, PLAINTIFF and other similarly aggrieved
14 employees were entitled upon cessation of employment with DEFENDANTS to timely payment
15 of all wages earned and unpaid prior to termination and/or discharge. Employees who were
16 discharged, including those discharged at the end of a season, were entitled to payment of all
17 wages earned and unpaid prior to discharge immediately upon termination. Pursuant to Labor
18 Code Section 202, employees that resigned were entitled to payment of all wages within 72
19 hours.

20 53. DEFENDANTS failed to pay PLAINTIFF and others whose employment ended
21 all wages earned and unpaid prior to termination timely in accordance with Labor Code Sections
22 201 and 202. PLAINTIFF is informed and believes and thereon alleges that at all relevant times
23 within the applicable limitations period, DEFENDANTS maintained and continue to maintain a
24 policy or practice of not paying terminated employees all their final wages earned on the date of
25 termination, including end of season terminations, or within 72 hours, if they resigned.

26 54. DEFENDANTS' failure to pay PLAINTIFF and other non-exempt hourly-paid
27 employees all wages earned in accordance with Labor Code Section 201 and 202 was willful.

1 DEFENDANTS had the ability to pay all wages earned by employees in accordance with Labor
2 Code Sections 201 and 202, but intentionally adopted policies or practices incompatible with the
3 requirements of Labor Code Section 201 and 202.

4 55. Pursuant to Labor Code Section 203, PLAINTIFF and other aggrieved employees
5 are entitled to continuation of their wages, from the day their earned and unpaid wages were due
6 until paid, a maximum of 30 days. DEFENDANTS did not comply with their obligations under
7 Section 203.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFF, on behalf of himself, aggrieved employees and the State of
10 California, prays for relief and judgment against DEFENDANTS as follows:

- 11 1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
12 25% payable to aggrieved employees);
- 13 2. Costs;
- 14 3. Reasonable attorney's fees; and
- 15 4. Such other and further relief as this Court may deem just and proper.

16
17 Dated: January 4, 2021

MOSS BOLLINGER LLP

18
19 By: 
20 Jeremy F. Bollinger
Attorneys for Plaintiff JOSE A. GUEVARA

EXHIBIT A

#52

PARAMOUNT

FORM #HR 301

Crew Boss				WEEKENDING: 11-10-79			
BREAK	LUNCH	BREAK					
16	30	16					
MON	TUES	WED	THUR	FRI	SAT	SUN	
4:00	4:00	4:00	4:00	4:00	4:00	4:00	
11:25	11:25	11:25	11:25	11:25	11:25	11:25	
2:00	2:00	2:00	2:00	2:00	2:00	2:00	
Grower: Wonderfull Full Rate: 13.50 Block: 170000				Grower: Wonderfull Full Rate: 13.50 Block: 170000			
Branch: 2229 Activity: 135000 Grand: 180000				Branch: 2229 Activity: 135000 Grand: 180000			
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WONDERFUL	
CREW # 7	
RH	920 X \$13.50 = \$12,420.00
OT	4 X \$20.25 = \$81.00
CB	54 X \$18.50 = \$999.00
578	TOTAL \$13,500.00

Tractor D

Crew: 43	
Emp#	
5365	
39459	
40810	
21360	
39008	
41097	
41098	
39624	
40808	

RH: 73 55 73 64 46 51

OT:

FOR OFFICE USE ONLY: Hrs 362 Pos

OT: 4

TS: 107

EXHIBIT B



Moss Bollinger
LLP

JEREMY F. BOLLINGER
310.982.2984/fax: 818.963.5954
jeremy@mossbollinger.com

October 30, 2020

VIA PAGA ONLINE FILING

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

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

OFR, Inc.
c/o Oscar Fausto Ramos,
Agent for Service of Process
1607 Simpson Street
Kingsburg, California 93631

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

Employer: OFR, Inc.

Employee: Jose A. Guevara, on behalf of himself and on behalf of all current and former hourly employees of OFR, Inc.

Dear Secretary Su:

Pursuant to the Private Attorney General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative employee, Jose A. Guevara ("Plaintiff"), on behalf of himself and all other similarly situated California employees, gives notice that his former employer, OFR, Inc. ("Defendant" or "OFR") violated the California Labor Code throughout Plaintiff's employment and within the one year prior to the mailing of this letter.

General Facts

Defendant OFR, Inc., is a farm labor contractor that employs agricultural workers that it assigns to work at farms throughout California, including in Kern County. Plaintiff Jose Guevara is a former employee of OFR, Inc. His work for OFR, Inc. included picking and pruning pomegranate trees and grapevines at various farms from early 2019 until November 2019.

During his employment at OFR, Inc., Plaintiff and similarly employed individuals regularly were subjected to the following violations of California law for which they are entitled to PAGA penalties.

Failure to Keep Accurate Records

At all relevant times, Defendant employed Plaintiff and other similarly employed individuals subject to Industrial Welfare Commission (“IWC”) Wage Order 14. Section 7 of Wage Order 14 provides in relevant part:

Every employer shall keep accurate information with respect to each employee including the following ... (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.

Defendant maintains time records that show only when an employee begins and ends a shift. OFR’s time records do not show when employees took a meal period, if any. Attached hereto as **Exhibit 1** is a true and correct copy of OFR’s time records for the week of November 4 – November 10, 2019. The time records, including Plaintiff’s time records, show that OFR failed to keep accurate records of employees’ meal periods, thereby violating section 7 of Wage Order 14.

As OFR failed to keep accurate time records, Defendant is liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Unpaid Minimum and Overtime Wages

At all relevant times, Defendant employed Plaintiff and other similarly employed individuals subject to Labor Code Section 1197.

Under Labor Code Section 1197 and Wage Order 14, Plaintiff and other similarly employed individuals were entitled to receive minimum wages for all hours worked.

Defendant failed to pay all wages for all hours worked in violation of Labor Code Section 1197 and Wage Order 14. Plaintiff and other similarly employed individuals are required to begin work ten to fifteen minutes before their scheduled shift time in order to get their tools for the day, including gloves, scissors, buckets, and a ladder. However, Plaintiff and other similarly employed individuals are only

paid from the start of their scheduled shift time. Therefore, Defendant's employees are not paid for the ten to fifteen minutes of work time required before their scheduled shift time.

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

Starting January 1, 2019, pursuant to Wage Order 14, Plaintiff and all similarly employed individuals were entitled to overtime wages payable at the rate of at least one and one-half times their regular rate of pay for all work more than 9 ½ hours in in one workday or more than fifty-five hours in one workweek. And, starting January 1, 2020, Plaintiff and all similarly employed individuals were entitled to overtime wages payable at the rate of at least one and one-half times their regular rate of pay for all work more than 9 hours in in one workday or more than fifty hours in one workweek

Defendant only paid these employees for their scheduled shift time and did not pay for the unscheduled work that Defendant required them to perform before the start of their shift, as described above, which would have been paid at their overtime rates when they work 9½ hour shifts in 2019 or 9 hour shifts in 2020. In addition, as discussed below, Defendant did not provide meal periods on all shifts. When Plaintiff and other similarly employed individuals were deprived of a meal period but Defendant deducted 30 minutes of time from their pay as if they had taken a meal period, that unpaid work time must be paid at the workers' overtime rate on the 9½ hour shifts worked in 2019 or 9 hour shifts worked in 2020. Defendant therefore failed to pay Plaintiff and other similarly employed individuals all overtime wages owing in violation of Wage Order 14 and Labor Code section 510.

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

Late and Missed Meal Periods

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

During Plaintiff's employment, Defendant regularly failed to provide, authorize, and/or permit to Plaintiff and other similarly employed Californians meal periods within the first five hours of work and failed to provide a second meal period on shifts that lasted more than ten hours, as required by California law.

During the last year, Plaintiff and other similarly situated hourly employees were required to work shifts lasting over five hours, entitling them to a meal break. Plaintiff and other similarly situated hourly employees typically worked more than six hours in a workday and, therefore, were not able to waive their first meal periods.

Plaintiff and other similarly situated hourly employees took their meal breaks at the direction of their crew leaders. Defendant regularly and systematically required Plaintiff to work a full shift without a meal period. Time records provided by OFR, Inc., only show the total hours worked by Plaintiff and other similarly situated employees on a particular day. OFR Inc.'s time records do not show when Plaintiff or other employees were released for a meal period. Plaintiff estimates that at least twice a week, Plaintiff was not provided with a meal period on shifts lasting more than five hours due to the amount of work he and other similarly situated employees were required to complete. Also, on shifts where a meal break was provided exactly five hours after the start of a shift, the meal break was late due to the 10 to 15 minutes of off-the-clock work Plaintiff and other similarly situated hourly employees were required to perform before their shift start time. In other words, those meal breaks were late by 10 to 15 minutes. Defendant failed to pay Plaintiff a meal period premium for each late or missed meal period.

Because Defendant released Plaintiff for his meal break, Defendant knew that Plaintiff had worked shifts on which Plaintiff and other similarly situated employees were entitled to one or two timely meal periods. When said meal periods were not timely authorized and/or permitted (or made available), Defendant did not pay meal period premium wages, as required by Labor Code § 226.7.

Accordingly, Defendant is liable for penalties of \$100 per pay period for the first meal period violation within the statutory period, and \$200 per pay period for each additional violation.

Missed Rest Breaks

California law requires that employers must authorize and permit non-exempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029.)

Within a year of the mailing of this letter, Defendant regularly failed to provide and make available to Plaintiff his first and second rest periods in compliance with California law. Also, when Plaintiff

worked over 10 hours, Defendant did not make available a third rest period. In fact, Defendant regularly and systematically required Plaintiff to work a full shift without any rest periods.

Defendant knew or was on constructive notice when Plaintiff had worked shifts entitling him to at least two rest breaks. When said rest breaks were not authorized and/or permitted (or made available), Defendant did not pay rest break premium wages, as required by California Labor Code Section 226.7.

Accordingly, Defendant is liable for penalties of \$100 per pay period for the first rest period violation within the statutory period, and \$200 per pay period for each additional violation.

Inaccurate Wage Statements

Plaintiff and similarly employed Californians received wage statements that did not list all wages earned, including the minimum wages, meal and rest break period premium wages discussed above, as required by Labor Code Section 226. As the above infractions explain, Plaintiff and similarly employed persons were entitled to premium wages that were not paid and, therefore, are entitled to penalty payments pursuant to Labor Code Section 226. *Azpeitia v. Tesoro Ref. & Mktg. Co. LLC*, No. 17-CV-00123-JST, 2017 WL 3115168, at *8 (N.D. Cal. July 21, 2017) (“the payments required by section 226.7 should be considered wages, and that the Plaintiffs may therefore bring a derivative claim under section 226.”). Accordingly, Defendant is liable for penalties of \$100 per pay period for the first wage statement violation within the statutory period, and \$200 per pay period for each additional violation.

Unpaid Final Wages

Plaintiff (and others) have ceased their employment at OFR Inc. Upon the cessation of that employment relationship (and as prescribed by statute), Plaintiff (and others whose employment has ended) did not receive all wages owed. Namely, said former employees (including Plaintiff) did not receive the minimum wages and premium wages for late and missed meal and rest periods to which they were entitled. *Brewer v. Gen. Nutrition Corp.*, No. 11-CV-3587 YGR, 2015 WL 5072039, at *19 (N.D. Cal. Aug. 27, 2015) (denying defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes of sections 203 and 226.”); *Castillo v. Bank of Am. Nat’l Ass’n*, No. SACV170580DOCKESX, 2018 WL 1409314, at *6 (C.D. Cal. Feb. 1, 2018) (“This Court agrees with the majority of courts that meal and rest premiums are wages for the purposes of waiting time penalties.”); *Karl v. Zimmer Biomet Holdings, Inc.*, No. C 18-04176 WHA, 2018 WL 5809428, at *10–11 (N.D. Cal. Nov. 6, 2018).

Plaintiff and those similarly situated, upon termination, did not receive all owed wages on the date of termination, or within 72 hours if they resigned. Therefore, Defendant has violated and continue to violate Labor Code Sections 201 and 202, because they have not paid the aforementioned wage premiums and are owed penalties pursuant to PAGA for each pay period in which Defendant failed to pay Plaintiff and other former employees their final wages.

Civil Penalties

As a result of the foregoing, Defendant is liable for civil penalties as provided for by California law. Consequently, Plaintiff and all other aggrieved employees of Defendant are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

Conclusion

Defendant violated and continues to violate its obligation to keep accurate time records, pay all minimum wages, make available legally compliant meal and rest breaks, issue legally compliant wage statements and pay all final wages. Plaintiff requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA. Alternatively, Plaintiff requests that the agency inform him if it does not intend to investigate these violations so that he may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,
MOSS BOLLINGER, LLP

A handwritten signature in black ink, appearing to read 'J. Bollinger', with a long horizontal flourish extending to the right.

Jeremy F. Bollinger

Encl.

EXHIBIT 1

#52

PARAMOUNT

FORM #HR 301

Crew Boss				WEEKENDING: 11-10-79			
BREAK	LUNCH	BREAK					
16	30	16					
MON	TUES	WED	THUR	FRI	SAT	SUN	
4:00	4:00	4:00	4:00	4:00	4:00	4:00	
11:25	11:25	11:25	11:25	11:25	11:25	11:25	
2:00	2:00	2:00	2:00	2:00	2:00	2:00	
Grower: Wonderfull Full Rate: 13.50 Block: 170000				Grower: Wonderfull Full Rate: 13.50 Block: 170000			
Branch: 2229 Activity: 135000 Grand: 180000				Branch: 2229 Activity: 135000 Grand: 180000			
Grower: Wonderfull Full Rate: 13.50 Block: 170000				Grower: Wonderfull Full Rate: 13.50 Block: 170000			
Branch: 2229 Activity: 135000 Grand: 180000				Branch: 2229 Activity: 135000 Grand: 180000			
Grower: Wonderfull Full Rate: 13.50 Block: 170000				Grower: Wonderfull Full Rate: 13.50 Block: 170000			
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Branch: 2229 Activity: 135000 Grand: 180000				Branch: 2229 Activity: 135000 Grand: 180000			

WONDERFUL	
CREW # 7	
RH	920 X \$13.50 = \$12,420.00
OT	4 X \$20.25 = \$81.00
CB	54 X \$18.50 = \$999.00
578	TOTAL \$13,500.00

Trooper D
Trooper D

Crew: 43	
Emp#	
5365	
39459	
40810	
21360	
39008	
41097	
41098	
39624	
40808	

RH: 73 55 73 64 46 51

OT:

FOR OFFICE USE ONLY: Hrs 362 Pos

OT: 4

TS: 107