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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF FRESNO**

14 VICTOR VELASQUEZ, on behalf of the
15 State of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 SUN-MAID GROWERS OF
20 CALIFORNIA, a California Corporation;
21 and Does 1 through 50, Inclusive;

22 Defendants.

Case No. 21CECG00406

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B)

1 Plaintiff Victor Velasquez (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant SUN-MAID GROWERS OF
8 CALIFORNIA (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself,
9 and on behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant Sun-Maid Growers of California (“DEFENDANT”) is a California
24 corporation that at all relevant times mentioned herein conducted and continues to conduct
25 substantial and regular business throughout California.

26 5. DEFENDANT operates a raisin and dried fruit processing plant. Since 1912,
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1 DEFENDANT has been headquartered in the San Joaquin Valley.

2 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
3 employee entitled to overtime pay, minimum wages and meal and rest periods from September
4 of 2016 to March of 2020. PLAINTIFF was at all times relevant mentioned herein classified
5 by DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
6 received additional compensation from DEFENDANT in the form of non-discretionary
7 incentive wages.

8 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, brings this Representative Action on behalf of the State of California with respect to
11 himself and all individuals who are or previously were employed by DEFENDANT in
12 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
13 the time period of October 9, 2019 until a date as determined by the Court (the "PAGA
14 PERIOD").

15 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
16 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
17 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
18 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
19 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
20 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s) and thereby gives rise
21 to civil penalties as a result of such conduct.¹ Based upon the foregoing, PLAINTIFF and all
22 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
23 2699, *et seq.*

24 9. The true names and capacities, whether individual, corporate, subsidiary,
25 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California
28 Labor Code §558(a)(3).

1 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
2 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
3 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
4 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
5 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
6 responsible in some manner for one or more of the events and happenings that proximately
7 caused the injuries and damages hereinafter alleged.

8 10. The agents, servants and/or employees of the Defendants and each of them acting
9 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
10 agent, servant and/or employee of the Defendants, and personally participated in the conduct
11 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
12 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
13 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
14 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
15 agents, servants and/or employees.

16 17 **THE CONDUCT**

18 11. During the PAGA PERIOD, DEFENDANT failed and continues to fail to
19 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
20 overtime worked. DEFENDANT unlawfully and unilaterally failed to accurately calculate
21 wages for overtime worked by PLAINTIFF and other AGGRIEVED EMPLOYEES in order
22 to avoid paying these employees the correct overtime compensation. As a result, PLAINTIFF
23 and the other AGGRIEVED EMPLOYEES forfeited wages due them for working overtime
24 without compensation at the correct overtime rates. DEFENDANT's uniform policy and
25 practice to not pay the AGGRIEVED EMPLOYEES the correct overtime rate for all overtime
26 worked in accordance with applicable law is evidenced by DEFENDANT's business records.
27 This uniform policy and practice of DEFENDANT was intended to purposefully avoid the
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1 payment of the correct overtime compensation which allowed DEFENDANT to illegally profit
2 and gain an unfair advantage over competitors who complied with the law.

3 12. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
4 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
5 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
6 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
7 time worked, meaning the time during which an employee was subject to the control of an
8 employer, including all the time the employee was permitted or suffered to permit this work.
9 DEFENDANT required these employees to work off the clock without paying them for all the
10 time they were under DEFENDANT's control. Specifically, DEFENDANT required
11 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
12 meal break. PLAINTIFF was from time to time interrupted by work assignments. Indeed there
13 were many days where PLAINTIFF did not even receive a partial lunch. As a result,
14 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
15 compensation by regularly working without their time being accurately recorded and without
16 compensation at the applicable minimum wage and overtime rates. To the extent that the time
17 worked off the clock did not qualify for overtime premium payment, DEFENDANT failed to
18 pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
19 1197, and 1197.1. Further, PLAINTIFF and other AGGRIEVED EMPLOYEES from time to
20 time were not paid wages for all time worked, including overtime wages, such that in the
21 aggregate employees were underpaid wages as a result of DEFENDANT's pattern and practice
22 of unevenly rounding time worked by its employees.

23 13. State and federal law provides that employees must be paid overtime at one-and-
24 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
25 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
26 employee's performance.

27 14. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
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1 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
2 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
3 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
4 hourly basis with incentive compensation when the employees met the various performance
5 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
6 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
7 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
8 of calculating overtime pay. Management and supervisors described the incentive program to
9 potential and new employees as part of the compensation package. As a matter of law, the
10 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
11 be included in the "regular rate of pay." DEFENDANT also underpaid sick pay wages to
12 PLAINTIFF and other AGGRIEVED EMPLOYEES by failing to pay such wages at the regular
13 rate of pay. Specifically, PLAINTIFFS and other non-exempt employees regularly earn
14 non-discretionary remuneration, including but not limited to, incentives, shift differential pay,
15 and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
16 pay to PLAINTIFFS and other AGGRIEVED EMPLOYEES at their base rates of pay. The
17 failure to do so has resulted in a systematic underpayment of overtime compensation to
18 PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANT.

19 15. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
21 a matter of company policy, practice and procedure, intentionally and knowingly failed to
22 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate of pay
23 for all overtime worked. This uniform policy and practice of DEFENDANT is intended to
24 purposefully avoid the payment of the correct overtime compensation as required by California
25 law which allowed DEFENDANT to illegally profit and gain an unfair advantage over
26 competitors who complied with the law. To the extent equitable tolling operates to toll claims
27 by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be
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1 adjusted accordingly.

2 16. As a result of their rigorous work schedules, PLAINTIFF and other
3 AGGRIEVED EMPLOYEES were also from time to time unable to take off duty meal breaks
4 and were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
5 EMPLOYEES were required to perform work as ordered by DEFENDANT for more than five
6 (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
7 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal
8 period from time to time in which these employees were required by DEFENDANT to work
9 ten (10) hours of work. PLAINTIFF and the other AGGRIEVED EMPLOYEES therefore
10 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's
11 strict corporate policy and practice.

12 17. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
13 were from time to time also required to work in excess of four (4) hours without being provided
14 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
15 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
16 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
17 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
18 shifts worked of ten (10) hours or more. PLAINTIFF and other AGGRIEVED EMPLOYEES
19 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work
20 schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES were periodically denied their
21 proper rest periods by DEFENDANT and DEFENDANT's managers. Additionally, the
22 applicable California Wage Order requires employers to provide employees with off-duty rest
23 periods, which the California Supreme Court defined as time during which an employee is
24 relieved from all work related duties and free from employer control. In so doing, the Court
25 held that the requirement under California law that employers authorize and permit all
26 employees to take rest period means that employers must relieve employees of all duties and
27 relinquish control over how employees spend their time which includes control over the
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1 locations where employees may take their rest period. Employers cannot impose controls that
2 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
3 DEFENDANT's uniform policy restricted PLAINTIFF and other AGGRIEVED EMPLOYEES
4 from unconstrained walks and was unlawful based on Defendant's rule which stated
5 PLAINTIFF and other AGGRIEVED EMPLOYEES could not leave the work premises during
6 their rest period.

7 18. DEFENDANT as a matter of corporate policy, practice and procedure,
8 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and
9 the other AGGRIEVED EMPLOYEES for required business expenses incurred by PLAINTIFF
10 and other AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on
11 behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required
12 to indemnify employees for all expenses incurred in the course and scope of their employment.
13 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee
14 for all necessary expenditures or losses incurred by the employee in direct consequence of the
15 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
16 though unlawful, unless the employee, at the time of obeying the directions, believed them to
17 be unlawful."

18 19. In the course of their employment PLAINTIFF and other AGGRIEVED
19 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
20 cellular phones as a result of and in furtherance of their job duties as employees for
21 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
22 with the use of their personal cellular phones and personal vehicles, including gas money, for
23 DEFENDANT's benefit. As a result, in the course of their employment with DEFENDANT,
24 PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses
25 which include, but are not limited to, costs related to the use of their personal cellular phones
26 and personal vehicles all on behalf of and for the benefit of DEFENDANT.

27 20. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
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1 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
2 to show, among other things, the correct overtime rate for overtime worked, the correct gross
3 wages earned, including, wages for work performed in excess of eight (8) hours in a workday
4 and/or forty (40) hours in any workweek, and the correct penalty payments for missed meal and
5 rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
6 employees with an accurate itemized wage statement in writing showing, among other things,
7 gross wages earned and all applicable hourly rates in effect during the pay period and the
8 corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT violated
9 Section 226 by failing to identify the correct rates of pay and number of hours worked,
10 including for the “Other Earnings,” item of pay. Aside, from the violations listed above in this
11 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists
12 all the requirements under California Labor Code 226 *et seq.* As a result, from time to time
13 DEFENDANT provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage
14 statements which violated Cal. Lab. Code § 226.

15 21. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
16 employment are due and payable twice during each calendar month, on days designated in
17 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
18 requires employers to pay employees all wages owed within seven (7) days of the close of the
19 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
20 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
21 payroll period.

22 22. By reason of this uniform conduct applicable to PLAINTIFF and all
23 AGGRIEVED EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure
24 which failed to accurately calculate and record the correct overtime rate for the overtime
25 worked by PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of
26 these employees’ overtime rates is the DEFENDANT’s burden. As a result of DEFENDANT’s
27 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
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1 calculate and/or pay all required overtime compensation for work performed by the
2 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
3 promulgated thereunder as herein alleged.

4 23. All of the conduct and violations alleged herein occurred during the PAGA
5 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
6 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
7 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
8 AJDAR 12157 (Certified for Publication 12/19/18).

9
10 **JURISDICTION AND VENUE**

11 24. This Court has jurisdiction over this Action pursuant to California Code of
12 Civil Procedure, Section 410.10.

13 25. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because PLAINTIFF worked for DEFENDANT in this County and
15 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
16 facilities in this County and/or conducts substantial business in this County, and (ii)
17 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
18 AGGRIEVED EMPLOYEES.

19 **FIRST CAUSE OF ACTION**

20 **For Violation of the Private Attorneys General Act**

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

22 **(By PLAINTIFF and Against All Defendants)**

23 26. PLAINTIFF incorporates by reference, as though fully set forth herein, the
24 prior paragraphs of this Complaint.

25 27. PAGA is a mechanism by which the State of California itself can enforce state
26 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
27 the state's labor law enforcement agencies. An action to recover civil penalties under
28 PAGA is fundamentally a law enforcement action designed to protect the public and not to

1 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
2 but to create a means of "deputizing" citizens as private attorneys general to enforce the
3 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
4 public interest to allow aggrieved employees, acting as private attorneys general to recover
5 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
6 claims cannot be subject to arbitration.

7 28. PLAINTIFF, and such persons that may be added from time to time who
8 satisfy the requirements and exhaust the administrative procedures under the Private
9 Attorney General Act, brings this Representative Action on behalf of the State of California
10 with respect to himself and all individuals who are or previously were employed by
11 DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
12 EMPLOYEES") during the time period of October 9, 2019 until a date as determined by the
13 Court (the "PAGA PERIOD").

14 29. On October 9, 2020, PLAINTIFF gave written notice by electronic mail to the
15 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
16 employer of the specific provisions of this code alleged to have been violated as required by
17 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
18 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
19 now commence a representative civil action under PAGA pursuant to Section 2699 as the
20 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
21 defined.

22 30. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
24 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
25 properly record and provide legally required meal and rest periods, (c) failed to pay overtime
26 wages, (d) failed to pay minimum wages, (e) failed to reimburse employees for required
27 expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor
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Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.² PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and,

B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

Dated: February 10, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

²Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).