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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA

JESUS GUZMAN;

Plaintiff,

vs.

ALCO HARVESTING, BETTERAVIA FARMS,
BONIPAK PRODUCE, INC. , and DOES 1-20,
Inclusive,

Defendants.

) Case No.:

) **COMPLAINT FOR DAMAGES,**
) **RESTITUTION, PENALTIES, INJUNCTIVE**
) **RELIEF, AND DECLARATORY RELIEF**

) Demand for Jury Trial

1 **INTRODUCTION**

2 1. Plaintiff Jesus Guzman is a Mexican national admitted to the United States to harvest and
3 process strawberries as an employee for Defendants as a non-exempt, hourly employee pursuant to the
4 federal H-2A visa program. Plaintiff brings this action against Defendants for breach of the terms of his
5 H-2A contract; unpaid contractual wages due, including but limited to $\frac{3}{4}$ guarantee; unpaid minimum
6 wages and overtime wages due, including for off-the-clock work and compensable time spent traveling
7 to and from the worksite; failure to pay wages due upon termination; failure to reimburse necessary
8 expenses; failure to provide complete meal and rest breaks; failure to provide and pay requested sick
9 leave; and for damages arising from retaliation.

10 2. Defendants' actions were unlawful and unfair, and Plaintiff also seeks restitution,
11 declaratory relief, and injunctive relief under California Business and Professions Code §§ 17200, *et*
12 *seq.* to prevent unfair competition and enjoin Defendants' continuing wrongful conduct in failing to
13 comply with well-established labor laws, alleged in this complaint.

14 3. Plaintiff also seeks to enforce civil penalties for himself and other aggrieved employees
15 as provided for under the California Private Attorneys General Act ("PAGA"), Labor Code §§ 2699, *et*
16 *seq.*

17 **JURISDICTION AND VENUE**

18 4. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §
19 395(a). The unlawful acts occurred in Santa Barbara County.

20 **PARTIES**

21 5. Plaintiff Jesus Guzman ("Plaintiff") is a citizen and national of Mexico who at all
22 relevant times, was lawfully admitted to the United States on a temporary work visa pursuant to 8
23 U.S.C. § 1101(a)(15)(H)(ii)(a).

24 6. Defendant Alco Harvesting, LLC. ("Alco") was and is a California Limited Liability
25 Company.

26 7. At all relevant times, Defendant Alco was and is a labor contractor who regularly
27 conducts business in Santa Maria, California. During the 2019, Defendant Alco recruited, hired, and
28

1 employed approximately 315 foreign workers, including Plaintiff, through the H-2A program to harvest,
2 package, and process lettuce and strawberries.

3 8. At all relevant times, Alco provided labor at locations owned or operated by Betteravia
4 Farms (Grower).

5 9. Defendant Betteravia Farms, LLC. (“Betteravia Farms”) was and is a California Limited
6 Liability Company. At all relevant times Betteravia Farms had a workforce in excess of 25 employees
7 and the labor performed by Plaintiff and other workers provided by Alco Harvesting was within
8 Betteravia Farms’ usual course of business.

9 10. At all relevant times, Alco provided labor for produce grown, packed, processed, and
10 shipped by Bonipak Produce, Inc.

11 11. Defendant Bonipak Produce, Inc. (Bonipak) is an entity holding itself out as a
12 corporation doing business at 1850 W. Stowell Rd., Santa Maria, Ca 93458. At all relevant times
13 Bonipak Produce, Inc. had a workforce in excess of 25 employees and the labor performed by Plaintiff
14 and other workers provided by Alco was within Bonipak’s usual course of business.

15 12. Each Defendant at all relevant time, has its principal place of business in and/or
16 regularly conducts business in the State of California. All defendants used services provided by the H-
17 2A workers for their own benefit.

18 13. Plaintiff is informed, believes and thereon alleges that at all relevant times, each
19 Defendant, directly or indirectly, through an agent or other person, employed and/or exercised control
20 over the wages, hours, or working conditions of Plaintiff and other current and former employees, and
21 committed the acts complained of herein.

22 14. Plaintiff is informed, believes and thereon alleges that at all relevant times, each
23 Defendant, directly or indirectly, through an agent or other person, engaged, employed, suffered, or
24 permitted Plaintiff and other current or former employees to work.

25 15. Plaintiff further alleges that each Defendant is legally responsible for the occurrences and
26 unlawful acts herein alleged and the resulting damages were actually and proximately caused by the
27 other Defendants’ conduct.

28 16. Plaintiff is ignorant of the true names or capacities, whether individual, corporate,

1 associate, or otherwise, of the Defendants sued herein under fictitious names of DOES ONE through
2 TWENTY, inclusive, and therefore sues said Defendants under such fictitious names under Code of
3 Civil Procedure § 474. Plaintiff is further informed and believes that one or more of the Defendants
4 DOES ONE through TWENTY, directly or indirectly, through an agent or other person, engaged,
5 employed, suffered, or permitted to work and/or exercised control over the wages, hours, or working
6 conditions of Plaintiff. Plaintiff is informed, believes and thereon alleges that each Defendant
7 designated herein as a DOE is legally responsible in some manner for the occurrences and unlawful acts
8 herein alleged and that the damages herein alleged were actually and proximately caused by their
9 conduct. Plaintiff will amend this complaint to allege the true names or capacities of said Defendants
10 once they have been ascertained.

11 17. Plaintiff is informed, believes and thereon alleges that at all relevant times, each
12 Defendant was acting as the agent of every other Defendant, and all acts alleged to have been committed
13 by any Defendant were committed on behalf of every other Defendant; and, at all times relevant herein,
14 each alleged act was committed by each Defendant, and/or agent, servants, or employees of each
15 Defendant, and each Defendant directed, authorized, or ratified each such act. Plaintiff is informed,
16 believes and thereon alleges that each Defendant, and each of them, were the agents, employees, co-
17 conspirators, business affiliates, subsidiaries, parent entities, owners and/or joint ventures of each other
18 Defendants, and each of them; and, in doing the things alleged herein, were acting at least in part within
19 the course and scope of such agency, employment, conspiracy, joint employer, alter ego status, and/or
20 joint venture and with the permission and consent of each of the other Defendants.

21 18. Whenever or wherever reference is made in this Complaint to any act by a Defendant or
22 Defendants, such allegations and reference shall also be deemed to mean the acts and failures to act of
23 each Defendant acting individually, jointly, and severally.

24 **FACTUAL ALLEGATIONS**

25 19. Plaintiff is informed, believes and thereon alleges that in 2019, Defendant Alco
26 Harvesting applied for and obtained authorization for H-2A visas from the U.S. government for Plaintiff
27 and approximately 315 other H-2A workers (hereafter referred to as “other aggrieved employees”) to
28 work for Defendant Alco Harvesting in the 2020 season. Under the express terms of the H-2A

1 application and order, the work to be performed was at locations under, owned, or managed by
2 Defendant Betteravia Farms. The fields are in and around Santa Maria, California, and it was
3 authorized to employ those workers under the terms and conditions of the H-2A Certification and
4 Job Order approved by the United States Department of Labor. The H-2A job order number is H-
5 300-20017-261083.

6 20. Defendants recruited and hired Plaintiff and other aggrieved employees, directly or
7 through their authorized agents, in San Luis Rio Colorado, Mexico, and Algodon, Mexico to perform
8 work in and around Santa Maria, California. Plaintiff and other aggrieved employees were employed as
9 non-exempt employees pursuant to written contract that, by operation of law, expressly included or
10 implied all terms of the H-2A job order attached here as Exhibit 1, as well as all other applicable state
11 and federal laws related to employment and housing.

12 21. After being hired, Plaintiff and, on information and belief, other aggrieved employees,
13 incurred food, lodging, and transportation expenses while waiting to receive their H-2A visa. Plaintiff
14 and, on information and belief, other aggrieved employees, paid some or all the transportation and
15 subsistence costs necessary to travel to Santa Maria, California, from the places of recruitment in
16 Mexico.

17 22. Defendants failed to reimburse Plaintiff or, on information and belief, other aggrieved
18 employees for the fees and costs related to travel expenses described in paragraph 21 during the first
19 week of work. As a result, Plaintiff and, on information and belief, other aggrieved employees were
20 paid less than the applicable minimum wages due for all hours worked in their first pay periods.

21 23. At all relevant times, Defendants required Plaintiff and other aggrieved employees to
22 work without compensation, off-the-clock, to perform duties prior to and/or subsequent to the recorded
23 time of their shifts. Plaintiffs, and on information and belief, other aggrieved employees were not
24 compensated for this time.

25 24. In addition to that off-the-clock time, Defendants required Plaintiff and other aggrieved
26 employees to report at 3:00 a.m. at the housing site where they would be picked up and transported to
27 the worksites. During this travel time, Plaintiff and the other aggrieved employees were under the
28 direction and control of Defendants, however, Plaintiff and, on information and belief, other aggrieved

1 employees were not compensated for this time.

2 25. Defendants transported Plaintiff and other aggrieved employees from the employer
3 provided housing to the worksite in a bus. Transportation to Plaintiff and the other aggrieved employees
4 benefitted the Defendants as it was required by law as a term of the H-2A certification, and non-
5 domestic H-2A workers could not have traveled to and from the worksites as they did not have driver's
6 licenses, personal transportation, or access to public transportation. At all relevant times, Defendants
7 used a bus to transport Plaintiff and the other aggrieved employees.

8 26. Once Plaintiff and the other aggrieved employees arrived at the worksite, Defendants
9 required that they perform preliminary tasks or preparatory duties. Plaintiff and other aggrieved
10 employees sometimes stood by waiting until they would go on the clock and be credited with hours
11 worked. At all relevant times, foreman would clock Plaintiff and other aggrieved employees in to begin
12 the shift, and out to end the shift. At the end of the workday and after the end of the shift, Plaintiff and
13 other aggrieved employees performed off-the-clock work, however, they would not be credited for, or
14 compensated for this time.

15 27. From the time they were directed to report, to the time they were released from work
16 after being dropped off at the housing sites, Plaintiff and other aggrieved employees, regularly worked
17 more than 9 hours per day and in excess of 50 hours per week but were not paid minimum wages,
18 overtime wages, or contract wages due for all hours worked.

19 28. Each Defendant failed to accurately and completely record and report all hours worked
20 by Plaintiff, including but not limited to the uncompensated transportation time, the off-the-clock
21 waiting time when Plaintiff and the other aggrieved employees remained on standby at the beginning of
22 their shift while Defendants prepared the equipment for field work, and the uncompensated preliminary
23 and postliminary time Plaintiff spent performing tasks before the crew began harvesting and packing
24 activities. At all relevant times, each Defendant failed to provide Plaintiff, and on information and
25 belief, other aggrieved employees, with an accurate and complete itemized wage statement, as those
26 statements failed to report the total hours worked, and gross and net wages earned that accurately
27 reflected all hours worked.

28 29. Plaintiff and other aggrieved employees, as part of their H-2A contracts were provided

1 with housing at a motel located at 210 Nicholson, Santa Maria, California 93454. A total of 64 units
2 were rented for a total occupancy of 320 occupants. There were approximately 5 occupants to a room.

3 30. The terms of work offered to Plaintiff included, *inter alia*, the terms offered in the
4 “clearance orders” (Exhibit A) submitted by Defendants to the U.S. Department of Labor to obtain
5 permission to import foreign workers; the terms of work set forth in the federal regulations governing
6 Plaintiff’s visas, 20 C.F.R. § 655.02 and the federal requirement to comply with all applicable federal,
7 state, and local laws, 20 C.F.R. § 655.103.

8 31. Specifically, Plaintiff’s work contract offered, *inter alia*, the following terms of work:

- 9 i. Wages for all hours worked equal to the higher of the state or federal minimum
10 wage, the adverse effect wage rate, or the prevailing wage rate;
- 11 ii. Work or wages for 3/4 of the period running from the first workday to the end
12 date specified in the clearance order (“the contract period”);
- 13 iii. Payment of all transportation, and recruitment expenses;
- 14 iv. Work at 35 hours per week to be paid at no less than the adverse effect wage rate
15 of \$14.77 per hour, the applicable state or federal minimum wage due, or the
16 prevailing wage for the period commencing on the date of entry into the United
17 States and ending December 1, 2020.
- 18 v. Compliance with California law regarding the minimum terms and conditions of
19 employment, including but not limited to the applicable minimum wage, overtime
20 wage, meal, and rest period protections and compensation;
- 21 vi. Three meals per day, which meet the state and federal standards for adequacy and
22 nutritional value and/or adequate cooking and eating facility.

23 32. During the course of Plaintiff’s employment, Defendants violated the terms of the work
24 contracts when they:

- 25 i. Failed to pay wages equal to the higher of the state or federal minimum wage, the
26 adverse effect wage rate, or the prevailing wage rate for all hours worked;
- 27 ii. Failed to provide work at 45 hours per week;
- 28 iii. Failed to comply with the applicable provisions of California law including those

1 regarding compensable time, overtime, wage statements, and meal and rest
2 periods as mandated by California law;

3 iv. Failed to provide housing that meets the state and federal standards for employee
4 housing;

5 v. Failed to provide meals that met the applicable standards established by state and
6 federal law;

7 vi. Failed to pay Plaintiff for at least 3/4 of the contract period.

8 33. At all relevant times, each Defendant failed to compensate Plaintiff and other aggrieved
9 employees for all regular wages earned during off-the-clock time they spent being transported to and
10 from the designated pickup points and the worksites, and waiting for Defendants to prepare the
11 equipment for field work.

12 34. At all relevant times, the minimum wage provisions of California Labor Code §§ 1182.12
13 and 1197; and Industrial Welfare Commission (“IWC”) Wage Order No. 14-2001, 8 California Code of
14 Regulations § 11140 (Jan. 1, 2001), have applied to Plaintiff and other aggrieved employees.
15 Employees who are covered by these provisions \$13.00 per hour from January 1, 2020, through the end
16 of contract period.

17 35. At all relevant times, during which Defendants employed temporary foreign labor, under
18 the H-2A program, Defendants were required to pay the Adverse Effect Wage Rate (“AEWR”) to its
19 comparably employed U.S. workers for all work performed at wage rates which varied by year and were
20 set by federal law. Plaintiff and the other H-2A workers were entitled to be paid at the AEWR of \$14.77
21 per hour for work performed in 2020, and to be paid overtime at the rate of time and one half the
22 applicable AEWR and/or double time at the rate of twice the applicable AEWR.

23 36. At all relevant times, Defendants failed to compensate Plaintiff at the AEWR or
24 applicable minimum wage rate for all regular wages earned during uncompensated compensable travel,
25 waiting time, and other off-the-clock time.

26 37. At all relevant times, Defendants required that Plaintiff, and on information and belief,
27 other aggrieved employees, work more than 9 hours per day, including uncompensated travel, waiting
28

1 time, and off-the-clock work, without paying the applicable overtime rate as required by Wage Order
2 No. 14-2001, 8 California Code of Regulations § 11140 and Labor Code § 860.

3 38. At all relevant times, Defendants failed to provide Plaintiff, and on information and
4 belief, other aggrieved employees, all legally required timely, complete and uninterrupted meal periods.

5 39. At all relevant times, Defendants failed to authorize and permit complete rest periods for
6 Plaintiff and, on information and belief, other aggrieved employees.

7 40. At all relevant times, Defendants failed to provide Plaintiff and, on information and
8 belief, other aggrieved employees with legally-required accurate itemized wage statements, including,
9 without limitation, total hours worked, including off-the-clock work; gross and net wages that accurately
10 reflected all hours worked; and Defendants' complete address beyond merely city, state, and zip code.

11 41. At all relevant times, Defendants failed to maintain accurate and complete payroll
12 records showing the daily hours worked by Plaintiff, including off-the-clock work, and wages earned.

13 42. All actions and omissions alleged herein were undertaken by Defendants either directly
14 and/or through their agents.

15 43. On July 3, 2020 Plaintiff had a sore throat and a cold. Plaintiff sought medical attention.
16 Medical personal conducted a Covid-19 test and Plaintiff was told to quarantine while he waited for his
17 test results. That same day, Plaintiff informed an agent of the Defendant, that the hospital had conducted
18 a Covid-19 test and that he was told to quarantine. Defendant's agent was furious and offered a semi-
19 isolated room (a room with another H-2A employee with a confirmed Covid-19 result).

20 44. July 3, 2020, Plaintiff verbally requested to use sick leave, but the request was denied
21 and Plaintiff was terminated.

22 45. Plaintiff sought medical attention in Mexico.

23 46. Plaintiff was out of the country Saturday, July 4, 2020 through Sunday, July 5, 2020.

24 47. On July 6, 2020, Plaintiff called Defendant to request an opportunity to return to work
25 but the request was denied, and Plaintiff was terminated for a second time. At that time Plaintiff was
26 owed wages for work performed during the prior pay period, but was not paid those wages at the time of
27 termination, and later received only partial payment of the wages due.

1 48. Approximately on July 16, 2020 Plaintiff received his test results and he tested positive
2 for Covid-19.

3
4 **FIRST CAUSE OF ACTION**
5 **Failure to Pay All Contractual Wages**
6 **In Violation of Cal. Labor Code § 216**
7 **By Plaintiff, individually, Against All Defendants**

8 49. Plaintiff re-alleges and incorporates by reference each preceding paragraph of the
9 complaint as if fully alleged herein.

10 50. By operation of 8 U.S.C. § 1188 and 20 C.F.R. § 655.130(a) the terms and conditions
11 established in the clearance order approved by the U.S. Department of Labor, in connection with the
12 certification of an application for H-2A workers, constitutes the contract between the H-2A workers and
13 the employer. Plaintiff was not provided with a copy of his employment contract, but by operation of
14 law the ETA 790 Clearance Order (Exhibit A) constitutes the written contract for employment between
15 Plaintiff and Defendants

16 51. The employment contract terms were from March 16, 2020 to December 1, 2020.

17 52. Plaintiff worked for Defendants from March 16, 2020 until July 3, 2020, and during this
18 time he performed his contractual obligation.

19 53. Defendants breached the employment contract by failing to provide Plaintiff with a copy
20 of the contract as required under the regulations for H-2A workers.

21 54. Defendants breached the employment contract by terminating employment without good
22 cause.

23 55. Defendants breached the employment contract by failing to pay the $\frac{3}{4}$ guarantee.

24 56. Defendants breached the employment contract with Plaintiff by failing to compensate
25 Plaintiff for all compensable time under applicable state and federal laws.

26 57. Defendants breached the employment contract with Plaintiff by failing to compensate
27 Plaintiff for all compensable hours worked at the contractually promised wage rates, including off-the-
28 clock time and overtime work.

 58. On information and belief, Defendants failed to pay Plaintiff for all hours worked, in part,
because Defendants failed to record the time when Plaintiff was required to wait in fields, engage in

1 preparatory or clean up tasks before and after the start of his shift at Defendants' direction.

2 59. Defendants breached the employment contract with Plaintiff by failing to reimburse
3 Plaintiff for travel, board, and subsistence expenses incurred during his travel from the place of
4 recruitment to the place of employment to begin the work contract with Defendants.

5 60. Defendants breached the employment contract with Plaintiff by failing to provide
6 Plaintiff with three meals per day that met the applicable standards established by state and federal law.

7 61. Plaintiff is entitled to and requests restitution and damages arising out of Defendants'
8 breach of contract in amounts to be determined at trial.

9 **SECOND CAUSE OF ACTION**

10 **Failure to Pay Overtime Wages** 11 **In Violation of Cal. Labor Code §§1194, and 1198;** 12 **IWC Wage Order No. 14-2001, 8 Cal. Code of Regs. § 11140** 13 **By Plaintiff, individually, Against All Defendants**

14 62. Plaintiff re-alleges and incorporates by reference each preceding paragraph of the
15 complaint as if fully alleged herein.

16 63. At all relevant times, Defendants required and/or knew or should have known that
17 Plaintiff and other aggrieved employees worked without compensation, off-the-clock, to perform duties
18 such as preparation work before the start of his recorded shift and after the end of his recorded shift.

19 64. Defendants also failed to compensate Plaintiff and, on information and belief, other
20 aggrieved employees for travel time from the designated pickup point at the employer provided housing
21 to the jobsite. Plaintiff spent a total of approximately 30 to 45 minutes traveling from the employer
22 provided housing to the worksite each day. Plaintiff was required to be ready to be picked up by
23 Defendants around 3:00 a.m. each workday.

24 65. At all relevant times, once Plaintiff and other aggrieved employees arrived at the
25 worksite, Plaintiff was required to perform off-the-clock work to prepare for harvesting. Even though
26 Plaintiff and other aggrieved employees were required to report at 3:00 a.m. and were under the control
27 of Defendants from that time on, Defendants recorded Plaintiff's, and on information and belief, other
28 aggrieved employees', start time to be sometime around 4:00 a.m.

66. At all relevant times, Plaintiff and other aggrieved employees were required to remain in
~~the field after the harvesting and packing activities ceased to perform additional tasks or wait for the~~
Complaint for Damages, Restitution, Penalties,
Injunctive Relief, and Declaratory Relief

1 completion of those tasks by others before being transported back to the pickup and drop-off site located
2 at the housing. As a result, Plaintiff and other aggrieved employees regularly performed work and were
3 under the direction and control of Defendants for more than ten (9) hours per day, and more than 50
4 hours per week.

5 67. At all relevant times, Defendants were required to and have failed to pay Plaintiff and, on
6 information and belief, other aggrieved employees the required overtime premium wages earned at 1-
7 1/2 times the regular wage for each hour over nine (9) hours per day and/ or more than 50 hours in a
8 workweek in amounts to be proven at trial.

9 68. Plaintiff demands pre-judgment interest in amounts to be proven at trial and is entitled to
10 an award of costs and reasonable attorneys' fees.

11 **THIRD CAUSE OF ACTION**

12 **Failure to Pay Minimum Wage for All Hours Worked** 13 **In Violation of Cal. Labor Code §§ 1182.12, 1194, and 1197;** 14 **IWC Wage Order No. 14-2001, 8 Cal. Code of Regs. § 11140, *et seq.*** **By Plaintiff, individually, Against All Defendants**

15 69. Plaintiff re-alleges and incorporates by reference each preceding paragraph of the
16 complaint as if fully alleged herein.

17 70. Defendants failed to pay Plaintiff and, on information and belief, other aggrieved
18 employees the legal minimum wage of \$13.00 per hour, for all compensable hours, in violation of Labor
19 Code §§ 1182.12 and 1197; and IWC Wage Order No. 14-2001, 8 Cal. Code of Regs. § 11140 (Jan. 1,
20 2001).

21 71. At all relevant times, Plaintiff and, on information and belief, other aggrieved employees
22 were not paid minimum wages for all hours worked, including compensable transportation time, waiting
23 time, and other off-the-clock work before and after the start of Plaintiff's and other aggrieved
24 employees' recorded shifts.

25 72. Defendants failed to reimburse Plaintiff and, on information and belief, other aggrieved
26 employees for necessary visa, inbound transportation and subsistence expenses incurred primarily for
27 the employer's benefit, which resulted in bringing their wages below the minimum wage.

28 73. As a result of Defendants' failure to pay Plaintiff and other aggrieved employees for
~~necessary expenses, Plaintiff and other aggrieved were paid wages at less than the minimum mandated~~

1 rate, Plaintiff is entitled to recover unpaid minimum wages due in amounts to be determined at trial, and
2 is entitled to an award of costs and reasonable attorneys' fees.

3
4
5 **FOURTH CAUSE OF ACTION**
6 **Liquidated Damages for Failure to Pay Minimum Wage**
7 **In Violation of Cal. Labor Code § 1194.2**
8 **By Plaintiff, individually, Against All Defendants**

9 74. Plaintiff re-alleges and incorporates by reference each preceding paragraph of the
10 complaint as if fully alleged herein.

11 75. As a direct and proximate result of Defendants' actions as alleged herein, Plaintiff is
12 entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid and
13 interest thereon, pursuant to Labor Code § 1194.2. The exact amount of liquidated damages owing will
14 be determined at trial.

15 **FIFTH CAUSE OF ACTION**
16 **Failure to Pay All Wages Due Upon Termination**
17 **In Violation of Cal. Labor Code §§ 201, 202, and 203**
18 **By Plaintiff, individually, Against All Defendants**

19 76. Plaintiff re-alleges and incorporates by reference each preceding paragraph of the
20 complaint as if fully alleged herein.

21 77. Pursuant to Labor Code §§ 201 and 202, terminated employees are entitled to be paid all
22 wages due upon termination in the event of a discharge or voluntary termination with requisite notice, or
23 within 72 hours of termination in the event of a voluntary termination without notice.

24 78. Defendants discharged Plaintiff within the meaning of Labor Code § 201. Defendants
25 have continuously, at all times since his discharge, willfully failed to pay Plaintiff all wages earned and
26 due, including compensable transportation time and off-the-clock work and waiting time before and
27 after the recorded start of his shift, in violation of Labor Code § 201.

28 79. In the alternative, to the extent that Plaintiff's termination could be considered voluntary,
Defendants failed to pay Plaintiff all wages due within 72 hours.

1 required that Plaintiff and other aggrieved employees work more than five hours without providing them
2 with an otherwise compliant meal period.

3 87. Plaintiff, and on information and belief, other aggrieved employees were not paid an
4 additional hour of compensation for each day a compliant meal period was not provided, and Plaintiff is
5 therefore entitled to recover an amount equal to his applicable hourly rate of pay times the total number
6 of days they were not authorized and permitted to take complete and timely meal periods, in an amount
7 to be proven at trial.

8 **SEVENTH CAUSE OF ACTION**

9 **Failure to Provide Rest Periods**

10 **In Violation of Cal. Labor Code §§ 226.7, 558, and 1198**

11 **By Plaintiff, individually, Against All Defendants**

12 88. Plaintiff re-alleges and incorporates by reference each preceding paragraph of the
13 complaint as if fully alleged herein.

14 89. IWC Wage Order 14 at section 12 provides, in pertinent part: "Every employer shall
15 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
16 middle of each work period. The authorized rest period time shall be based on the total hours worked
17 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

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

20 91. California Labor Code section 226.7 requires that Defendants provide Plaintiff and other
21 aggrieved employees with all complete rest periods specified in the applicable wage order and that
22 Plaintiff and other aggrieved employees are entitled to be paid one additional hour of pay per day at the
23 regular rate of compensation as additional wages for each workday that the rest period is denied.

24 92. At all relevant times, Defendants controlled the timing and length of Plaintiff's rest
25 periods. At various times during the season, Defendant began to run the clock while the Plaintiff and
26 other aggrieved employees were still inside the fields, thereby resulting in rest periods that were less
27 than 10 minutes.

28 93. Plaintiff and, on information and belief, other aggrieved employees were not paid an
additional hour of compensation for each day a compliant rest period was not provided, and Plaintiff is
therefore entitled to recover an amount equal to his applicable hourly rate of pay times the total number

1 of days he was not authorized and permitted to timely and complete rest periods in an amount to be
2 proven at trial.

3 **EIGHTH CAUSE OF ACTION**

4 **Failure to Provide Accurate and Complete Itemized Wage Statements**
5 **In Violation of Cal. Labor Code § 226**
6 **By Plaintiff, individually, Against All Defendants**

7 94. Plaintiff re-alleges and incorporates by reference each preceding paragraph of the
8 complaint as if fully alleged herein.

9 95. California Labor Code § 226 provides that employers are required to furnish employees
10 with accurate and complete itemized wage statements containing all items enumerated under subdivision
11 (a).

12 96. At all relevant times, Defendants violated Labor Code section 226(a) by knowing and
13 intentionally failing to accurately report for Plaintiff, and on information and belief, other aggrieved
14 employees, the required items, including:

- 15 a. the gross and net wages earned; and
- 16 b. the total hours worked.

17 97. Pursuant to California Labor Code § 226(e), Plaintiff is entitled to recover the greater of
18 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
19 hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty
20 of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

21 **NINTH CAUSE OF ACTION**

22 **Failure to Grant and Pay Medical Leave**
23 **Violation of Labor Code 233 and California Labor Code 246 and 246.5**
24 **By Plaintiff, Individually, Against All Defendants**

25 98. Plaintiff re-alleges and incorporates by reference each preceding paragraph of the
26 complaint as if fully alleged herein.

27 99. California Labor Code 246 (a) (1) An employee who, on or after July 1, 2015 works in
28 California for the same employer for 30 or more days within a year from the commencement of
employment is entitled to paid sick days as specified in this section.

100. California Labor Code 246.5 (a) (1) Upon the oral or written request of an employee, an
employer shall provide paid sick days for the following purposes: Diagnosis, care, or treatment of an
existing health condition of, or preventative care for, an employee or an employee's family member.

101. Plaintiff and other aggrieved employees were “essential workers” and were eligible for and entitled to take sick leave related to a quarantine order or Covid-10 related illness under the provisions of the Family First Coronavirus Response Act and California’s Covid-19 Supplemental Paid Sick Leave.

102. Pursuant to California Labor Code 233(a) Employers employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement for diagnosis, care, or treatment.

103. On July 3, 2020, Plaintiff verbally requested sick time in order to care and seek treatment for Covid-19. Plaintiff had worked more than 30 days within the year for Defendants.

104. Defendant knowing, and intentionally failed to grant Plaintiff the requested sick time and, instead, terminated Plaintiff..

105. Plaintiff and, on information and belief, other aggrieved employees were also denied the requested sick leave and suffered loss of wages as a result of the failure to grant and pay sick leave. Pursuant to Labor Code 233(d) Plaintiffs is entitled to reinstatement and actual damages or one day's pay, whichever greater, in an amount to be proven at trial, as well as other appropriate relief.

TENTH CAUSE OF ACTION

Retaliation for complaining about unsafe working conditions and requesting authorized sick leave.

Violation of Labor Code 98.6 and 246.5

By Plaintiff, Individually, Against All Defendants

106. Plaintiff re-alleges and incorporates by reference each preceding paragraph of the complaint as if fully alleged herein.

107. Labor code 246.5 (c)(1) provides that an employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department, or alleging a violation of this article cooperating in an investigation or prosecution of an alleged violation of this article .

1 108. Pursuant to Labor Code 233 (d), any employee aggrieved by a violation of this section
2 shall be entitled to reinstatement and actual damages or one day's pay whichever is greater, and to
3 appropriate equitable relief.

4 109. Labor Code 233 (e) an employee may bring civil action for the remedies provided by this
5 section in a court competent jurisdiction.

6 110. On July 3, 2020, Plaintiff sought medical care in Santa Maria, CA for symptoms for
7 Covid-19. Plaintiff orally requested sick time.

8 111. The Defendant knowing and intentionally terminated Plaintiff after the Plaintiff requested
9 sick time.

10 112. On or about July 6, 2020, Plaintiff called Defendant asking to be reinstated. The
11 Defendant knowing and intentionally terminated Plaintiff for a second time.

12 113. Plaintiff and, on information and belief, other aggrieved employees suffered loss of
13 wages as a result of the failure to grant and pay sick leave. Pursuant to Labor Code 233(d), [a]ny
14 employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages
15 or one day's pay, whichever greater, and to appropriate equitable relief.

16 **ELEVENTH CAUSE OF ACTION**
17 **Unlawful and Unfair Competition**
18 **In Violation of Cal. Bus. & Profs. Code §§ 17200, *et seq.***
19 **By Plaintiff, individually, Against All Defendants**

20 114. Plaintiff re-alleges and incorporates by reference each preceding paragraph of the
21 complaint as if fully alleged herein.

22 115. Plaintiff sues for his own interest pursuant to Business and Professions Code §§ 17200, *et*
23 *seq.* Plaintiff suffered injury-in-fact and lost money as a result of Defendants' unlawful and unfair
24 competition alleged herein. Plaintiff also seeks to obtain injunctive relief to enforce important rights
25 affecting the public interest.

26 116. Defendants failed to pay wages owed, including compensable travel time, waiting time
27 and off-the-clock time before and after the recorded start time of his shift, in violation of Labor Code §§
28 218 and 1194, and IWC Wage Order No. 14-2001, 8 Cal. Code of Regs. § 11140 (Jan. 1, 2001).

 117. Defendants failed to provide complete and timely meal periods to Plaintiff and other
aggrieved employees in violation of California Labor Code § 226.7, and IWC Wage Order No. 14-2001,

1 8 Cal. Code of Regs. § 11140.

2 118. Defendants failed to provide fully compliant rest periods per each four hours of work or
3 a major fraction thereof in violation of California Labor Code §§ 226.7 and 558, and IWC Wage Order
4 No. 14-2001, 8 Cal. Code of Regs. § 11140.

5 119. Defendants failed to pay applicable contract wages, minimum wages, and overtime
6 wages due for all hours worked during the relevant time period, including off-the-clock waiting time
7 before the recorded start of his shift and reporting time, in violation of Labor Code §§ 1182.12, 1194,
8 1194.2, 1197, 1198; and IWC Wage Order No. 14-2001, 8 Cal. Code of Regs. § 11140; 29 U.S.C. § 206,
9 5 U.S.C. § 1188, and implementing regulations.

10 120. Defendants failed to allow Plaintiff the right to take sick leave available to him by
11 operation of Labor Code § 246, and applicable Family First Coronavirus Response Act and California's
12 Covid-19 Supplemental Paid Sick Leave.

13 121. Defendants failed to reimburse Plaintiff and other aggrieved employees for the necessary
14 visa, inbound transportation, and subsistence expenses incurred traveling from the place of recruitment
15 to the worksite within the first weeks of work, thereby resulted in an offset against wages paid and a
16 failure to pay minimum wages due.

17 122. Defendants failed to pay wages due upon termination in violation of Labor Code § 201
18 and/or 202.

19 123. Defendants failed to provide accurate and complete itemized wage statements, including
20 but not limited to the total hours worked, gross and net wages earned that accurately reflect all hours
21 worked, in violation of California Labor Code §§ 226(a), , IWC Wage Order No. 14-2001, 8 Cal. Code
22 of Regs. § 11140(7).

23 124. Defendants, by the acts and/or omissions alleged herein have committed and are
24 committing unlawful and unfair competition.

25 125. As a result of Defendants' unlawful business practices, Plaintiff is entitled to and Plaintiff
26 seeks restitution of unpaid wages, out of pocket expenditures, the economic value of benefits unlawfully
27 denied to him by Defendants in an amount to be determined at trial, and a preliminary and permanent
28 injunction enjoining Defendants to cease the unlawful and unfair business practices as heretofore
alleged. Plaintiff is informed and believes that Defendants continue to violate the above-referenced
statutes and regulations with respect to other employees and unless enjoined from doing so by this

1 Court, will continue to do so to the detriment of the Plaintiff, other current and future employees and
2 competing, law abiding agricultural employers.

3 126. Further, Defendants have been unjustly enriched as a direct result of its unlawful business
4 practices alleged in this complaint and will continue to benefit from those practices and have unfair
5 competitive advantage over other California agricultural employers, including both growers and farm
6 labor contractors, who comply with the laws described herein, to the injury of Plaintiff and the general
7 public, if allowed to retain the unpaid wages and other economic benefits due their employees.

8 127. Plaintiff is informed and believes that Defendants are currently or will be employing H-
9 2A workers under the same unlawful conditions alleged in this complaint and are thereby continuing to
10 engage in unfair competition. Therefore, Plaintiff seeks injunctive relief directing Defendants to cease
11 their unlawful competition and come into compliance with the statutory and contractual provisions as
12 mandated by state and federal law.

13 **TWELFTH CAUSE OF ACTION**

14 **Enforcement of Penalties**

15 **Pursuant to the California Labor Code §§ 2698, *et seq.***

16 **(Private Attorneys General Act)**

17 **By Plaintiff, individually, Against All Defendants**

18 128. Plaintiff re-alleges and incorporates by reference each preceding paragraph of the
19 complaint as if fully alleged herein.

20 129. Plaintiff is an aggrieved employee as defined in Labor Code § 2699.

21 130. Plaintiff is informed and believes and thereon alleges that Defendants committed, without
22 limitation, the following violations of the California Labor Code against Plaintiff and other current or
23 former H-2A employees while they were and/or are employed by Defendants:

24 a. Defendants violated Labor Code §§ 223, 558, 860, 1194, 1197, and 1198, 8 Cal. Code
25 Regs. § 11140, by failing to pay Plaintiff and, on information and belief, other current
26 and former employees of Defendants, all wages due for all hours worked, including
27 compensable transportation time, and work performed off-the-clock.

28 b. Defendants violated Labor Code §§ 226(a) failing to provide Plaintiff and, on
information and belief, other current and former employees of Defendants, with an
accurate itemized statement in writing providing required information.

c. Defendants violated Labor Code §§ 201 and 202 by failing to pay Plaintiff and, on

information and belief, other current and former employees of Defendants, all wages due, including wages for work performed off-the-clock, on the date of the employee's involuntary termination or within 72 hours of the employee's voluntary termination.

d. Defendants violated Labor Code §§ 226.7 and 558 by failing to provide to Plaintiff and, on information and belief, other aggrieved employees of Defendants, complete meal periods in accordance with IWC Wage Order 14-2001.

e. Defendants violated Labor Code §§ 226.7 and 558 by failing to provide Plaintiff and, on information and belief, other aggrieved employees required rest periods per each four hours of work or a major fraction thereof in accordance with IWC Wage Order No. 14-2001.

f. Defendants violated Labor Code § 223 by paying Plaintiff, and on information and belief, other current and former other aggrieved employees of each Defendant, at rates lower than the rates established by statute for all regular hours worked and all overtime hours of work performed, in excess of 10 hours in a day and/or hours worked on the seventh day of the workweek, including work performed off-the-clock, and failing to pay Plaintiffs at rates based on the AEW for all hours worked pursuant to the H-2A Act.

g. .

h. Defendants violated Labor Code § 1197 by failing to reimburse Plaintiff and, on information and belief, other aggrieved employees of Defendants, for the travel cost expenses necessary to travel from Mexico to the U.S. for work; this failure to reimburse Plaintiff and, on information and belief, other current and former employees, for expenditures during the first weeks of were resulted in , an offset against wages due to them.

i. Defendants violated provisions of IWC Wage Order 14-2001 and Labor Code § 1197 by failing to pay Plaintiff and, on information and belief, other aggrieved employees the minimum wage due for all hours worked, including failing to pay Plaintiff and other aggrieved employees for compensable transportation time, waiting time, and work performed off-the-clock.

1 j. Defendants violated provisions of IWC Wage Order 14-2001 and Labor Code § 558 by
2 failing to pay Plaintiff for all hours worked, including; failing to pay Plaintiff and, on
3 information and belief, other aggrieved employees for overtime for all hours worked,
4 including compensable transportation time and work performed off-the-clock that
5 resulted in more than 9 hours in a workday and/or 50 hours in a workweek; failing to
6 authorize and permit meal periods specified by the Wage Order; failing to authorize and
7 permit rest periods specified by the Wage Order.

8 k. Defendants violated Labor Code §§ 98.6 and 246.5 by retaliating against Plaintiff for his
9 complaints and request for sick leave.

10 131. Pursuant to Labor Code § 2699.3, on October 9, 2020, Plaintiff submitted a written notice
11 by certified mail to Defendants and the Labor and Work Force Development Agency (LWDA) of the
12 factual and legal basis for the labor law violations alleged in this complaint.

13 132. Pursuant to Labor Code § 2699.3(a)(2)(B), the LWDA has failed to timely notify the
14 aggrieved employees of its intent to investigate the alleged violations. As such, Plaintiff commences a
15 civil action in accordance with Labor Code §§ 2699, *et seq.*, including 2699.3(a).

16 133. Plaintiff has not received any notice that the violations have been cured. Therefore,
17 Plaintiff seeks to enforce penalties applicable to these violations as provided in Labor Code §§ 2699(b),
18 2699.3(b)(2)(B), and 2699(c).

19 **ATTORNEYS' FEES AND COSTS**

20 Plaintiff is entitled to fees and costs, pursuant to California law, including, without limitation,
21 Labor Code §§ 226, 2699, and 1194, and Code Civ. Proc. § 1021.5. Enforcement of statutory provisions
22 enacted to protect workers and to ensure prompt payment of wages due employees is a fundamental
23 public interest in California. Consequently, Plaintiff's success in this action will result in the
24 enforcement of important rights affecting the public interest and will confer a significant benefit upon
25 the public.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff respectfully prays for judgment against Defendants as follows:

28 **AS TO THE FIRST CAUSE OF ACTION:**

1 1. Awarding Plaintiff for actual, incidental, and consequential damages in an amount to be
2 determined at trial.

3 **AS TO THE SECOND CAUSE OF ACTION:**

4 1. Awarding Plaintiff for actual, incidental, and consequential damages in an amount to be
5 determined at trial

6 **AS TO THE THIRD CAUSE OF ACTION:**

7 1. Awarding unpaid overtime in an amount equal to one and a half the hourly rate, in an
8 amount to be determined at trial.

9 2. Attorney's fee under LC 1194

10 **AS TO THE FOURTH CAUSE OF ACTION:**

11 1. Awarding Plaintiff for the unpaid balance of the full amount of the minimum wages due,
12 in an amount to be determined at trial, plus pre-judgment interest on that amount.

13 **AS TO THE FIFTH CAUSE OF ACTION:**

14 1. Awarding Plaintiff liquidated damages in an amount equal to the full amount of unpaid
15 minimum wages, in an amount to be proven at trial, plus interest on that amount.

16 **AS TO THE SIXTH CAUSE OF ACTION:**

17 1. Awarding Plaintiff of waiting time penalties in an amount equal to thirty (30) times
18 Plaintiff's daily rate of pay commencing July 6, 2020, pursuant to Labor Code § 203, in an amount to be
19 proven at trial.

20 **AS TO THE SEVENTH CAUSE OF ACTION:**

21 1. Awarding Plaintiff in an amount equal to one hour of pay for each meal period that was not
22 provided, in an amount to be proven at trial.

23 **AS TO THE EIGHTH CAUSE OF ACTION:**

24 1. Awarding Plaintiff in an amount equal to one hour of pay for each rest period that was
25 not provided, in an amount to be proven at trial.

26 **AS TO THE NINTH CAUSE OF ACTION:**

27 1. Awarding Plaintiff for each pay period that was Defendants failed to provide an accurate
28 and complete itemized wage statements, in an amount to be proven at trial

1 **AS TO THE TENTH CAUSE OF ACTION:**

- 2 1. Awarding Plaintiff in an amount equal to one day of wage for each day he was not paid his
3 sick leave in an amount to be proven at trial.

4 **AS TO THE ELEVENTH CAUSE OF ACTION:**

- 5 1. Awarding Plaintiff in an amount equal to one day of wages for each day he was not reinstated to
6 his job in an amount to be proven at trial.

7 **AS TO THE TWELFTH CAUSE OF ACTION:**

- 8 1. Declaratory relief that Defendants' conduct violates all applicable California labor laws.
9 2. A preliminary and permanent injunction ordering Defendants to cease all unlawful and/or
10 unfair business practices as heretofore alleged.

11 **AS TO THE THIRTEENTH CAUSE OF ACTION:**

- 12 1. Enforcement of PAGA penalties arising from violations suffered by Plaintiff and the
13 other aggrieved employees, including, without limitations, penalties under Labor Code §§ 210, 226.3,
14 Labor Code § 2699(f); and Labor Code § 558, which includes a penalty in an amount equal to underpaid
15 wages due, and Labor Code § 1197.1..

16 **AS TO ALL CAUSES OF ACTION:**

17 An award of:

- 18 1. Cost of suit, generally and pursuant to Labor Code §§ 226, 2699, and 1194, and Code
19 Civ. Proc. § 1021.5
20 2. Attorneys' fees pursuant to Labor Code §§ 226, 2699, 2802, and 1194, and Code Civ.
21 Proc. § 1021.5
22 3. Pre-judgment interest as authorized under the law;
23 4. Post-judgment interest as authorized under the law; and
24 5. Such other and further relief as the Court deems just and proper.

25 Dated:

Respectfully Submitted,

26 CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

27 _____/S/