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Superior Court of California
County of Fresno
By: I. Herrera, Deputy

Attorneys for Plaintiff JAVIER REYES

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

JAVIER REYES, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

**S. STAMOULES, INC. DBA STAMOULES
PRODUCE COMPANY, INC.**, a California
corporation; and **DOES 1-10**,

Defendants.

Case No.: 21CECG00557

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

- 1. FAILURE TO PROVIDE MEAL PERIODS**
- 2. FAILURE TO ALLOW REST PERIODS**
- 3. UNPAID MINIMUM AND OVERTIME WAGES**
- 4. FAILURE TO REIMBURSE BUSINESS EXPENSES**
- 5. FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**
- 6. FAILURE TO TIMELY PAY FINAL WAGES UPON CESSATION OF EMPLOYMENT**
- 7. UNFAIR COMPETITION (BUSINESS & PROFESSIONS CODE §§ 17200 *et seq.*)**
- 8. PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE §§ 2698 *et seq.* ("PAGA")**

DEMAND FOR JURY TRIAL

1 Plaintiff JAVIER REYES (“Plaintiff”) on behalf of himself, and all others similarly
2 situated, complains and alleges as follows:

3 **INTRODUCTION**

4
5 1. This is a class action lawsuit brought on behalf of Plaintiff and others similarly
6 situated, under Code of Civil Procedure § 382, seeking remedies for missed and late meal periods,
7 remedies for missed rest periods, unpaid minimum and overtime wages, reimbursement for
8 business expenses, waiting time penalties in the form of continuation wages for failure to timely
9 pay employees, inaccurate wage statement penalties, restitution, reasonable attorneys’ fees and
10 costs from S. STAMOULES, INC. DBA STAMOULES PRODUCE COMPANY, INC.
11 (“Defendants”). This amended complaint adds a claim for civil penalties under the Private
12 Attorneys General Act of 2004, Labor Code §§ 2698 et seq (“PAGA”).

13 **JURISDICTION AND VENUE**

14 2. This Court has jurisdiction over this action under Article 6 of the California
15 Constitution and California Code of Civil Procedure § 410.10.

16 3. This Court has jurisdiction over Plaintiff’s and Class Members’ claims for unpaid
17 minimum wages under California Labor Code § 1194.

18 4. This Court has jurisdiction over Plaintiff’s and Class Members’ claims for waiting
19 time penalties and meal and rest period violations under California Labor Code § 218.

20 5. This Court has jurisdiction over Plaintiff’s and the Class Members’ claims for
21 restitution of ill-gotten gains arising from Defendants’ unlawful and/or unfair business practices
22 under California Business & Professions Code §§17200 *et seq.*

23 6. This Court has jurisdiction over Plaintiff’s claims for civil penalties pursuant to
24 PAGA.

25 7. Venue is proper in this judicial district pursuant to California Code of Civil
26 Procedure § 395.5 because S. Stamoules, Inc., operates in California with its principal place of
27 business in Fresno County, and the acts, conduct, omissions, and events alleged herein, occurred
28 in Fresno County.

PARTIES

8. Defendant S. STAMOULES, INC. DBA STAMOULES PRODUCE COMPANY, INC., a California corporation, is an agricultural business with fields in Fresno, California. Defendant grows and packages cantaloupe, honey dew, watermelon, bell pepper, sweet corn, and broccoli for distribution throughout the United States, Canada and Mexico. Defendant employees seasonal and non-seasonal workers to work in its fields.

9. Plaintiff JAVIER REYES ("Plaintiff") is a resident of Fresno County, California. Plaintiff was an hourly-paid, non-exempt seasonal agricultural worker who worked in the trailer crew transporting fruit from Defendant's fields to its cooler ("Trailer Crew") from July 2020 until he was laid off at the end of the agricultural season on October 15, 2020.

10. Plaintiff is informed and believes that DOES 1 through 10 are corporations, individuals, limited liability partnerships, limited liability companies, general partnerships, sole proprietorships or other business entities or organizations of a nature not currently known.

11. Plaintiff is unaware of the true names of Defendants DOES 1 through 10. Plaintiff sues said defendants by said fictitious names and will amend this complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named Defendants is in some manner responsible for the events and allegations set forth in this complaint.

12. Plaintiff is informed and believes, and based thereon alleges that at all relevant times, each Defendant was an employer, was the principal, agent, partner, joint venture, officer, director, controlling shareholder, subsidiary affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendant knew or should have known about, authorized, ratified, adopted,

1 approved, controlled, aided and abetted the conduct of all other Defendants. As used in this
2 complaint “Defendant” means “Defendants and each of them,” and refers to the Defendants named
3 in the particular cause of S. Stamoules, Inc. and DOES 1 through 10.

4 13. At all times mentioned herein, each Defendant was the co-conspirator, agent,
5 servant, employee, and/or joint venture of each of the other Defendants and was acting within the
6 course and scope of said conspiracy, agency, employment, and/or joint venture and with the
7 permission and consent and knowledge of each of the other Defendants.

8 14. Plaintiff makes the allegations in this complaint without any admission that, as to
9 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading, and
10 Plaintiff reserves all of Plaintiff’s rights to plead in the alternative.

11 **FACTS COMMON TO CAUSES OF ACTION**

12 15. Plaintiff and the members of the Classes are, and at all times pertinent hereto,
13 have been non-exempt employees within the meaning of the California Labor Code, and the
14 implementing rules and regulations of the IWC California Wage Orders.

15 16. During the relevant period, Defendant has cultivated, harvested, and packed for
16 distribution agricultural commodities, such as cantaloupe, honey dew, watermelon, bell pepper,
17 sweet corn, and broccoli, in Fresno County. Defendant sells and distributes its agricultural
18 produce to various parts of California, the United States and neighboring countries.

19 17. During the relevant period, Defendant hired Plaintiff in July 2020 and laid him off
20 at the end of the season in October 2020.

21 18. During the relevant period, Defendant regularly paid Plaintiff and its other
22 seasonal agricultural workers every Friday for the work performed in the previous work week.
23 For example, work performed in the week ending September 19, 2020 was paid on Friday,
24 September 25, 2020.

25 19. When Defendant laid off Plaintiff and its other seasonal agricultural workers at
26 the end of a season, Defendant did not pay them on their last day of work. For example,
27 Plaintiff’s last day of work at the end of the 2020 season was on October 15, 2020, but
28 Defendant did not pay Plaintiff his final wages until October 20, 2020 – five days later.

1 Defendant paid its other seasonal agricultural workers in the same fashion at the end of each
2 season.

3 20. During the relevant period, Defendant failed to pay all wages due to Plaintiff and
4 the Class. Specifically, Defendant did not pay Plaintiff and other similarly situated agricultural
5 workers for work performed before their scheduled shifts. Employees working in the fields were
6 required to arrive 5-10 minutes before their scheduled shift time in order to obtain gloves,
7 knives, and any other equipment needed to gather the produce. Employees driving tractors within
8 the field were also required to arrive 5-10 minutes before their scheduled shift to start the engine
9 and allow the tractor's motor to heat up. By performing this pre-shift work, employees could
10 begin gathering produce precisely at the start of their scheduled shift time. However, Defendant
11 did not pay for these 5-10 minutes of pre-shift work and only paid such employees from the
12 beginning of their scheduled shift time. As a result, Defendant failed to pay the field workers all
13 minimum wages owed, and all overtime wages owed when employees worked more than 9 hours
14 in a day in 2020 and more than 8.5 hours in a day in 2021.

15 21. Additionally, on days the Trailer Crew employees, such as Plaintiff, were not
16 provided with an uninterrupted meal period, Defendant automatically deducted 30 minutes of
17 pay to account for a meal period that was not actually afforded to the Trailer Crew employees.
18 For instance, if Plaintiff and the Trailer Crew employees began their shift at 6:30 a.m. and ended
19 at 5:00 p.m., Plaintiff was only paid for 10 hours of work instead of the 10.5 hours of work time.
20 Moreover, Plaintiff and the Trailer Crew employees were only paid until the end of their shift
21 time. About 3-4 days a week, Plaintiff and the Trailer Crew employees were required to work an
22 additional 30-45 minutes of unpaid work as they waited for employees in the cooler to unload the
23 final trailer of the workday. This time was unpaid *at the end of a shift*. As such, Plaintiff and
24 other Trailer Crew employees were not paid for all minimum and overtime hours worked in
25 violation of Labor Code 1197 and the applicable IWC Wage Orders, including Wage Orders 13
26 and 14.

27 22. As described above, during the relevant period, Plaintiff and other similarly
28 situated hourly employees were required to work in shifts lasting over five hours, entitling them

1 to a thirty-minute meal period beginning within the first five hours of work. Plaintiff regularly
2 worked shifts lasting more than five hours. However, as described above, Plaintiff and other
3 Trailer Crew employees were not afforded the time to take their mandated meal breaks. Plaintiff
4 and other Trailer Crew employees had to eat while driving and transporting produce from the
5 fields to Defendant's cooler and, therefore, did not receive uninterrupted duty-free meal period.

6 23. Likewise, depending on the time of year, Plaintiff and other similarly situated
7 agricultural employees began their shifts at either 6:30 a.m. or 7:00 a.m. Regardless of the start
8 shift time, Defendant made meal periods available at 12:00 p.m. As such, Defendant provided
9 late meal periods on each day that employees, including Plaintiff, began working before 7:00
10 a.m. Moreover, because Defendant required individuals working in the field to arrive 5-10
11 minutes before the start of their scheduled shift time in order to gather gloves, knives, and
12 prepare tractor machinery to gather the produce, as alleged above, each meal period (even on
13 days when shifts were scheduled to begin at 7:00 a.m.) was taken after five hours of work and
14 was therefore late due to the unaccounted 5-10 minutes of pre-shift work time and in violation of
15 Labor Code § 512 and the applicable wage order, including IWC Wage Orders 13 and 14.

16 24. While Defendant inserted "30" minutes of meal period time on Plaintiff's and
17 other Trailer Crew employees' weekly time sheets and deducted 30 minutes of pay from their
18 work hours, Defendant failed to maintain any record of the time Plaintiff and the other Trailer
19 Crew employees' allegedly ended a work period and began the 30-minute meal period or the
20 time Plaintiff and the other Trailer Crew employees' allegedly ended their meal period and began
21 their next work period, as required by Section 7(a)(3) of the applicable IWC Wage Orders,
22 including Wage Orders 13 and 14.

23 25. Defendant also regularly failed to provide and make rest periods available to
24 Plaintiff and the Trailer Crew employees in compliance with California law. Plaintiff and other
25 Trailer Crew employees regularly worked shifts of 10 hours (and over 10 hours with the
26 unaccounted 5-10 minutes of pre-shift or post-shift work time), entitling them to a minimum of
27 two 10-minute rest breaks (and three rest breaks on shifts over 10 hours). However, Defendant
28 regularly and systematically required Plaintiff and the other Trailer Crew employees to work a

1 full shift without any rest periods.

2 26. Defendant knew or was on constructive notice when Plaintiff had worked shifts
3 entitling him to at least two rest breaks, and sometimes three rest breaks.

4 27. Pursuant to the above-mentioned policies, Defendant failed to pay Plaintiff and
5 other Trailer Crew employees all overtime and premium wages owed for all the hours they
6 worked, as required by law during the relevant period. As a result, Defendant provided
7 inaccurate wage statements to Plaintiff and other Class Members that failed to show all wages
8 earned and all relevant hourly rates.

9 28. To the extent Defendant failed pay all wages due to those Class Members whose
10 employment terminated consistent with Labor Code sections 201 and 202, Defendant is liable for
11 waiting time penalties as to those Class Members.

12 29. During the relevant period, Defendant required Plaintiff and the Trailer Crew
13 employees to wear gloves while they work. Plaintiff and other Trailer Crew employees
14 purchased their own gloves and were not reimbursed for these purchases. Plaintiff purchased 2-3
15 pairs of gloves per week from July 2020 to October 2020 at \$10-\$15 per pair.

16 30. Plaintiff was paid \$13.00 per hour. Similarly situated Trailer Crew employees were
17 also paid less than two times the minimum wage. As such, pursuant to Section 9(b) of the
18 applicable IWC Wage Orders, including Wage Orders 13 and 14, Defendant was required to
19 provide all necessary tools and equipment. Moreover, pursuant to Labor Code Section 2802,
20 Defendant was required to reimburse all necessary expenditures. As Defendant was required to
21 indemnify Plaintiff and other Trailer Crew employees for gloves purchased in direct consequence
22 of the discharge of their duties, Defendant violated Labor Code Section 2802 by requiring Plaintiff
23 and other Trailer Crew employees to purchase their own gloves and failing to reimburse the
24 expense.

25 **CLASS ACTION ALLEGATIONS**

26 31. Plaintiff brings this action on behalf of himself and on behalf of the following class
27 and subclasses:
28

1 **The Class:** All current and former non-exempt employees of
2 Defendant employed at any time during the period beginning four
3 years prior to the filing of the Complaint through the date notice is
4 mailed to the class.

5 **Trailer Crew Subclass:** All members of the Class who worked in
6 the trailer crew.

7 **Seasonal Employee Subclass:** All members of the Class who were
8 employed on a seasonal or temporary basis.

9 **Wage Statement Subclass:** All members of the Class who were
10 employed at any time during the period beginning one year prior to
11 the filing of the Complaint through the date notice is mailed to the
12 Class.

13 **Waiting Time Penalty Subclass:** All members of the Class who
14 were employed at any time during the period beginning three years
15 prior to the filing of the Complaint through the date notice is mailed
16 to the Class.

17 32. This action has been brought and may be properly maintained as a class action
18 pursuant to the provisions of California Code of Civil Procedure § 382 and other applicable law.

19 33. **Numerosity of the Classes:** Members of the Class and Subclasses are so numerous
20 that their individual joinder is impracticable. Plaintiff estimates that there are no less than 100
21 persons in each Class. The precise number of Class members and their addresses are unknown to
22 Plaintiff. However, Plaintiff is informed and believes that the number can be obtained from
23 Defendant's records. Class members may be notified of the pendency of this action by
24 conventional mail, electronic mail, the Internet, or published notice.

25 34. **Existence of Predominance of Common Questions of Fact and Law:** Common
26 questions of law and fact exist as to all members of the Classes. These questions predominate over
27 any questions effecting only individual members of the Classes. These common factual and legal
28 questions include:

- (a) Whether Class Members may recover unpaid wages for work performed before the
start and/or after the end of their scheduled shifts;
- (b) Whether Defendant failed to provide Class Members their statutorily required meal
periods in a timely fashion;

- 1 (c) Whether Defendant failed to provide Class Members their statutorily required meal
2 periods on shifts over 10 hours;
- 3 (d) Whether Defendant failed to pay a premium in the amount of one additional hour
4 of pay to Class Members who were not provided their statutorily required meal
5 periods;
- 6 (e) Whether Defendant failed to provide Class Members their statutorily required rest
7 periods;
- 8 (f) Whether Defendant failed to pay a premium in the amount of one additional hour
9 of pay to Class Members who were not provided their statutorily required rest
10 periods;
- 11 (g) Whether Defendant failed to provide members of the Class all wages owed at the
12 time of the cessation of the employee-employer relationship on account of unpaid
13 minimum wages, overtime wages or premium wages;
- 14 (h) Whether Defendant failed to provide members of the Seasonal Employee Subclass
15 all wages owed at the time of the cessation of the employee-employer relationship
16 on account of their seasonal employment status;
- 17 (i) Whether the expenses incurred by members of the Trailer Crew were necessary and
18 reimbursable under Labor Code § 2802;
- 19 (j) Whether Defendant committed unlawful business practices or acts within the
20 meaning of Business & Professions Code §§ 17200, et seq.
- 21 (k) Whether Class Members are entitled to premium wage waiting time penalties,
22 inaccurate wage statement penalties and other relief in conjunction with their
23 overtime and meal period claims.
- 24 (l) Whether, as a consequence of Defendant's unlawful conduct, the Class Members
25 are entitled to restitution, and/or equitable relief;
- 26 (m) Whether Defendant's affirmative defenses, if any, raise any common issues of law
27 or fact as to Plaintiff and the Class members as a whole.
28

1 35. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
2 respective Class and Subclasses because Plaintiff and Class Members sustained injuries and
3 damages, and were deprived of property rightly belonging to them, arising out of and caused by
4 Defendant's common course of conduct in violation of the law as alleged herein, in similar ways.
5 Plaintiff is subject to the same affirmative defenses as the members of the classes.

6 36. **Adequacy:** Plaintiff is a member of the Class and Subclasses and will adequately
7 and fairly protect the interests of the Classes. Plaintiff has no interests adverse to the interests of
8 absent Class members. Plaintiff is represented by legal counsel who have substantial class action
9 experience in civil litigation and employment law in the class action context.

10 37. **Superiority:** A class action is superior to other available means for fair and
11 efficient adjudication of the Class claims and would be beneficial for the parties and the court.
12 Class action treatment will allow a large number of similarly situated persons to prosecute their
13 common claims in a single forum, simultaneously, efficiently, and without the unnecessary
14 duplication of effort and expense that numerous individual actions would require. The monetary
15 amounts due to individual class members are likely to be relatively small; the burden and expense
16 of individual litigation would make it difficult or impossible for individual members of each Class
17 to seek and obtain relief. A class action will serve an important public interest by permitting such
18 individuals to effectively pursue recovery of the sums owed to them and to require Defendant to
19 stop violating the rights of all of its current similarly situated employees. Further, class litigation
20 prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PROVIDE MEAL PERIODS**

23 **(By Plaintiff, the Class and the Trailer Crew Subclass Against all Defendants)**

24 38. Plaintiff incorporates all of the foregoing paragraphs of this complaint as if fully
25 alleged herein.

26 39. At all relevant times, Plaintiff and the other members of the Class were employees
27 of Defendant covered by Labor Code Sections 226.7 and 512, and the applicable Wage Orders,
28 including Wage Orders 13-2001 and 14-2001.

1 40. Pursuant to Labor Code Sections 226.7 and 512, and the applicable Wage Orders,
2 including Wage Orders 13-2001 and 14-2001, Plaintiff and the other members of the Break Class
3 were entitled to a meal period of at least 30 minutes for each workday they worked more than 5
4 hours in any workday with the meal period starting before the end of the fifth hour of work and a
5 second meal period of at least 30 minutes for each workday they worked more than 10 hours in
6 any workday. Plaintiff and the other members of the Class were entitled to one additional hour of
7 pay for every day that a timely meal period was not provided.

8 41. Defendant failed to consistently provide Plaintiff and other members of the Class
9 meal periods within the first 5 hours of their workday for each workday that they worked more
10 than 5 hours in accordance with Labor Code Sections 226.7 and 512, and the applicable Wage
11 Orders, including Wage Orders 13-2001 and 14-2001. Plaintiff is informed and believes and
12 thereon alleges that during the applicable limitations period, Defendant maintained and continues
13 to maintain a policy or practice of not consistently releasing their hourly employees to take their
14 meal periods after working 5 hours in a workday and preventing putative class members from
15 taking their meal periods within the first 5 hours of the workday.

16 42. Defendant failed to consistently provide Plaintiff and other members of the Break
17 Class a second meal period for each workday that they worked more than 10 hours in accordance
18 with Labor Code Sections 226.7 and 512, and the applicable Wage Orders, including Wage
19 Orders 13-2001 and 14-2001. Plaintiff is informed and believes and thereon alleges that during
20 the applicable limitations period, Defendant maintained and continues to maintain a policy or
21 practice of not consistently releasing their hourly employees to take a second meal period after
22 working 10 hours in a workday.

23 43. Defendant further denied members of the Trailer Crew Subclass uninterrupted
24 meal periods of at least 30 minutes as it required those class members to take their meal period in
25 their trucks while they continued to perform their duties for Defendant. Despite the fact that
26 Defendant knew Trailer Crew Subclass members worked through their meal periods, Defendant
27 deducted 30 minutes of time from their work hours for each day.

44. Labor Code Section 226.7, subd (c), provides: “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, ... , the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Defendant failed to provide Plaintiff and other members of the Class and Trailer Crew Subclass the additional hour of pay required by Labor Code Section 226.7 for late or missed meal periods. Plaintiff is informed and believes and thereon alleges that at all relevant times within the applicable limitations period, Defendant maintained and continues to maintain a policy or practice of not paying additional pay to employees for late or missed meal periods.

45. As a result of Defendant's unlawful conduct, Plaintiff and the other members of the Class and Trailer Crew Subclass have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for late or missed meal periods.

46. Pursuant to Labor Code Section 218, Plaintiff and the other members of the Class and Trailer Crew Subclass are entitled to recover the full amount of their unpaid additional pay for late and missed meal periods. Pursuant to Labor Code Section 218.5, Plaintiff and the other members of the Class and Trailer Crew Subclass are entitled to recover their reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and the other members of the Class and Trailer Crew Subclass are entitled to recover prejudgment interest on the additional pay owed for late and missed meal periods.

47. WHEREFORE, Plaintiff and the Classes he seeks to represent request relief as described below.

SECOND CAUSE OF ACTION

FAILURE TO ALLOW REST PERIODS

(By Plaintiff and the Trailer Crew Subclass Against All Defendants)

48. Plaintiff incorporates all of the foregoing paragraphs of this complaint as if fully alleged herein.

1 49. At all relevant times, Plaintiff and the other members of the Trailer Crew Subclass
2 were employees of Defendant covered by Labor Code Section 226.7 and the applicable Wage
3 Orders, including Wage Orders 13-2001 and 14-2001.

4 50. Pursuant to Labor Code Section 226.7 and Wage Orders 13-2001 and 14-2001,
5 Plaintiff and the other members of the Trailer Crew Subclass were entitled to rest periods of at
6 least 10 minutes for each four-hour period of work, or major fraction thereof, and one hour of
7 additional pay for every day a required rest period was not provided.

8 51. Plaintiff and the other members of the Trailer Crew Subclass regularly worked
9 shifts entitling them to at least two 10-minute rest periods, and often worked shifts longer than
10 10 hours during the applicable limitations period, entitling them to a third rest period. However,
11 Defendant did not allow Plaintiff and the other members of the Trailer Crew Subclass to take rest
12 periods in accordance with Labor Code Section 226.7 and Wage Orders 13-2001 and 14-2001.

13 52. Labor Code Section 226.7, subd (c), provides: “If an employer fails to provide an
14 employee a meal or rest or recovery period in accordance with a state law, including, but not
15 limited to, an applicable statute or applicable regulation, standard, or order of the Industrial
16 Welfare Commission, ... , the employer shall pay the employee one additional hour of pay at the
17 employee’s regular rate of compensation for each workday that the meal or rest or recovery
18 period is not provided.” Defendant failed to provide Plaintiff and the other members of the
19 Trailer Crew Subclass the additional hour of pay required by Labor Code Section 226.7.
20 Plaintiff is informed and believes and thereon alleges that at all relevant times within the
21 applicable limitations period, Defendant maintained and continues to maintain a policy or
22 practice of not paying additional pay to members of the Trailer Crew Subclass for missed rest
23 periods.

24 53. As a result of Defendant’s unlawful conduct, Plaintiff and the other members of
25 the Trailer Crew Subclass have suffered damages in an amount, subject to proof, to the extent
26 they were not paid additional pay owed for missed rest periods.

27 54. Pursuant to Labor Code Section 218, Plaintiff and the other members of the
28 Trailer Crew Subclass are entitled to recover the full amount of their unpaid additional pay for

missed rest periods. Pursuant to Labor Code Section 218.5, Plaintiff and the other members of the Trailer Crew Subclass are entitled to recover their reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and the other members of the Trailer Crew Subclass are entitled to recover prejudgment interest on the additional pay owed for missed rest periods.

55. WHEREFORE, Plaintiff and the other members of the Trailer Crew Subclass he seeks to represent request relief as described below.

THIRD CAUSE OF ACTION

FAILURE TO PAY MINIMUM AND OVERTIME WAGES

(By Plaintiff, the Class and the Trailer Crew Subclass against All Defendants)

56. Plaintiff incorporates all of the foregoing paragraphs of this complaint as if fully alleged herein.

57. At all relevant times, Plaintiff and the other members of the Class and the Trailer Crew Subclass were employees of Defendant covered by Labor Code Sections 510 and 1197 and the applicable IWC Wage Orders, including IWC Wage Orders 13 and 14.

58. Pursuant to Labor Code Section 1197 and the applicable Wage Orders, Plaintiff and the other members of the Class and the Trailer Crew Subclass were entitled to receive minimum wages for all hours worked.

59. Pursuant to Labor Code Section 510 and Wage Order 14, prior to January 1, 2019, Plaintiff and the other members of the Class and the Trailer Crew Subclass 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 10 hours in one workday. After January 1, 2019 and pursuant to Labor Code Section 510 and Wage Order 14, Plaintiff and the other members of the Class and the Trailer Crew Subclass were entitled to overtime wages payable at the rate of at least one and one-half times their regular rate of pay for all hours worked in excess of 9½ hours in one workday or more than fifty-five hours in one workweek. After January 1, 2020 and pursuant to Section 510 and Wage Order 14, Plaintiff and the other members of the Class and the Trailer Crew Subclass were entitled to overtime wages payable at the rate of at least one and one-half times their

1 regular rate of pay for all hours worked in excess of 9 hours in one workday or more than fifty
2 hours in one workweek.

3 60. Defendant failed to pay Plaintiff and the other members of the Class and the
4 Trailer Crew Subclass minimum wages for all hours worked in violation of Labor Code Section
5 1197 and Wage Order 14. Plaintiff is informed and believes and thereon alleges that at all
6 relevant times within the applicable limitations period, Defendant maintained and continues to
7 maintain a policy or practice of requiring Plaintiff and putative class members to perform various
8 duties before the start of their scheduled shift but only paying those employees from the
9 beginning of their scheduled shift instead of the actual time worked; and requiring Plaintiff and
10 other members of the Trailer Crew Subclass to perform duties after the end of their scheduled
11 shift and during meal breaks but only paying those employees through the end of their scheduled
12 shifts and deducting 30 minutes for meal periods they did not take or that were interrupted by
13 work duties.

14 61. In committing the violations of state law as herein alleged, Defendant has
15 knowingly and willfully refused to perform its obligations to compensate class members for all
16 wages earned and all hours worked.

17 62. As a direct result, Plaintiff and the other members of the Class and the Trailer
18 Crew Subclass have suffered and continue to suffer, substantial losses related to the use and
19 enjoyment of such compensation, wages, lost interest on such monies and expenses and
20 attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all
21 to its respective damage in amounts according to proof at trial and within the jurisdictional
22 limitations of this Court.

23 63. Plaintiff, on behalf of himself and the other members of the Class and the Trailer
24 Crew Subclass, requests the unpaid minimum and overtime wages, all penalties to which they
25 may recover interest, attorneys' fees, costs, and any other remedies allowed by law, including
26 liquidated damages on his minimum wages claim, in an amount to be proven at trial.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(By Plaintiff and the Trailer Crew Subclass Against All Defendants)**

4 64. Plaintiff incorporates all of the foregoing paragraphs of this complaint as if fully
5 alleged herein.

6 65. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her
7 employee for all necessary expenditures or losses incurred by the employee in direct
8 consequence of the discharge of his or her duties.”

9 66. Defendant required Plaintiff and the other members of the Trailer Crew Subclass
10 to wear gloves while they worked. Plaintiff and the other members of the Trailer Crew Subclass
11 purchased their own gloves and were not reimbursed for these purchases.

12 67. Plaintiff and the other members of the Trailer Crew Subclass are entitled to
13 reimbursement for these necessary expenditures, plus interest under Labor Code § 2802.

14 68. As a result of Defendant’s violations of Labor Code § 2802, Defendant is also
15 liable for attorneys’ fees and costs under Labor Code § 2802(c).

16 69. WHEREFORE, Plaintiff and the members of the Trailer Crew Subclass he seeks
17 to represent request relief as described below.

18 **FIFTH CAUSE OF ACTION**

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

20 **(By Plaintiff and the Wage Statement Subclass Against All Defendants)**

21 70. Plaintiff incorporates all of the foregoing paragraphs of this complaint as if fully
22 alleged herein.

23 71. Section 226(a) of the California Labor Code requires Defendant to accurately
24 report total hours worked by Plaintiff and the members of the proposed Wage Statement Class,
25 and to accurately set forth wages earned. Defendant has knowingly and intentionally failed to
26 comply with Labor Code section 226(a) on each and every wage statement provided to Plaintiff
27 and members of the proposed Wage Statement Subclass by failing to accurately list all hours
28 worked and all wages earned, including premium wages for missed or late breaks. *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.”).

72. As a consequence of Defendant’s knowing and intentional failure to comply with Labor Code section 226(a), Plaintiff and each Wage Statement Subclass member he seeks to represent are each entitled to actual damages or penalties not to exceed \$4000 pursuant to Labor Code section 226(b), together with interest thereon and attorneys’ fees and costs.

73. WHEREFORE, Plaintiff and the Wage Statement Subclass members he seeks to represent request relief as described below.

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES UPON CESSATION OF EMPLOYMENT

(By Plaintiff, the Waiting Time Penalty Subclass and the Seasonal Employee

Subclass Against All Defendants)

74. Plaintiff incorporates all of the foregoing paragraphs of this complaint as if fully alleged herein.

75. Plaintiff, whose employment was terminated on October 15, 2020, and the other members of the Waiting Time Penalty Subclass and Seasonal Employee Subclass were employees of Defendant covered by Labor Code Section 201 or 202 whose employment with Defendant ended during the relevant class period.

76. A layoff, for purposes of Labor Code Section 201, irrespective of the promise or prospect of reemployment for another season, is a discharge.

77. Pursuant to Labor Code Sections 201 or 202, Plaintiff and the other members of the Waiting Time Penalty Subclass and Seasonal Employee Subclass were entitled upon cessation of employment with Defendant to timely payment of all minimum, overtime, and premium wages earned and unpaid prior to termination, including upon layoff. Discharged employees were entitled to payment of all minimum, overtime, and premium wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all minimum, overtime, and premium wages earned and unpaid prior to resignation within 72 hours

1 after giving notice of resignation or, if they gave 72 hours' previous notice, they were entitled to
2 payment of all minimum, overtime, and premium wages earned and unpaid prior to resignation at
3 the time of resignation.

4 78. Defendant failed to pay Plaintiff and the other members of the Waiting Time
5 Penalty Subclass and Seasonal Employee Subclass all minimum, overtime, and premium wages
6 earned and unpaid prior to termination timely in accordance with Labor Code Section 201 or 202.
7 Plaintiff is informed and believes and thereon alleges that at all relevant times within the applicable
8 limitations period, Defendant maintained and continues to maintain a policy or practice of not
9 paying terminated and laid off employees all their final wages earned before termination due under
10 Labor Code Section 201 or 202.

11 79. Defendant's failure to pay Plaintiff and members of the Waiting Time Penalty
12 Subclass and Seasonal Employee Subclass all wages earned prior to termination in accordance
13 with Labor Code Sections 201 or 202 was willful. Defendant had the ability to pay all wages
14 earned by employees prior to termination in accordance with Labor Code Sections 201 or 202, but
15 intentionally adopted policies or practices incompatible with the requirements of Labor Code
16 Sections 201 or 202.

17 80. Pursuant to Labor Code Section 201 or 202, Plaintiff and the other members of the
18 Waiting Time Penalty Subclass and Seasonal Employee Subclass are entitled to all wages earned
19 prior to termination that Defendant failed to pay them.

20 81. Pursuant to Labor Code Section 203, Plaintiff and the other members of the Waiting
21 Time Penalty Subclass and Seasonal Employee Subclass are entitled to continuation of their
22 wages, from the day their earned and unpaid wages were due upon termination until paid, up to a
23 maximum of 30 days.

24 82. As a result of Defendant's conduct, Plaintiff and the other members of the Waiting
25 Time Penalty Subclass and Seasonal Employee Subclass have suffered damages in an amount,
26 subject to proof, to the extent they were not paid for all wages earned prior to termination.

27 83. As a result of Defendant's conduct, Plaintiff and the other members of the Waiting
28 Time Penalty Subclass and Seasonal Employee Subclass have suffered damages in an amount,

1 subject to proof, to the extent they were not paid all continuation wages owed under Labor Code
2 Section 203.

3 84. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and the other members of
4 the Waiting Time Penalty Subclass and Seasonal Employee Subclass are entitled to recover the
5 full amount of their unpaid wages, continuation wages under Labor Code Section 203, reasonable
6 attorney's fees and costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section
7 3287(a), Plaintiff and the other members of the Waiting Time Penalty Subclass and Seasonal
8 Employee Subclass are entitled to recover prejudgment interest on the amount of their unpaid
9 wages and unpaid continuation wages.

10 **SEVENTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION IN VIOLATION OF**
12 **BUSINESS & PROFESSIONS CODE §§ 17200 *et. seq.***

13 **(By Plaintiff and All Classes Against All Defendants)**

14 85. Plaintiff incorporates all of the foregoing paragraphs of this complaint as if fully
15 alleged herein.

16 86. Business & Professions Code §§ 17200 *et seq.* (the "UCL") prohibits unfair
17 competition in the form of any unlawful, unfair, or fraudulent business act or practice. Business &
18 Professions Code §§ 17204 allows "any person who has suffered injury in fact and has lost money
19 or property" to prosecute a civil action for violation of the UCL.

20 87. The unlawful conduct of Defendant alleged herein constitutes unfair competition
21 within the meaning of Business & Professions Code §§ 17200 *et seq.* Due to the allegedly unlawful
22 and unfair business practices in violation of the Labor Code, Defendant has gained a competitive
23 advantage over other comparable companies doing business in the State of California that comply
24 with their obligations to compensate employees for all earned wages as required by law.

25 88. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the
26 filing of this action, and continuing to the present, Defendant has committed unlawful, unfair,
27 and/or fraudulent business acts and practices as defined by Business & Professions Code § 17200,
28 by failing to provide adequate meal and rest periods to Plaintiff and members of the Class, by

1 failing to pay all minimum and overtime wages to Plaintiff and members of the Class and by failing
2 to reimburse Plaintiff and members of the Trailer Crew Subclass.

3 89. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent
4 acts and practices described herein, Defendant has received and continues to hold ill-gotten gains
5 belonging to Plaintiff and members of the Classes in the form of unpaid wages and unpaid break
6 premiums that reduced or offset compensation earned by Plaintiff and Class Members. As a direct
7 and proximate result of Defendant's unlawful business practices, Plaintiff and Class Members have
8 suffered economic injuries including, but not limited to break premiums, unpaid wages, non-
9 reimbursed business expenses, and resulting reductions or offsets to earned compensation.
10 Defendant has profited from its unlawful, unfair, and/or fraudulent acts and practices in the amount
11 of those break premiums, unpaid wages, non-reimbursed expenses, and interest accrued thereon.

12 90. Pursuant to Business and Professions Code § 17203, Plaintiff and other members
13 of the Class are entitled to restitution of monies owed and belonging to them, including interest
14 thereon, that Defendant wrongfully withheld from them and retained for themselves by means of
15 their unlawful and unfair business practices.

16 91. Plaintiff and members of the Classes are entitled to recover reasonable attorneys'
17 fees in connection with their unfair competition claims pursuant to Code of Civil Procedure §
18 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

19 92. WHEREFORE, Plaintiff and the Classes he seeks to represent request relief as
20 described below.

21 **EIGHTH CAUSE OF ACTION**

22 **VIOLATION OF CALIFORNIA'S PRIVATE ATTORNEYS GENERAL ACT**

23 **(LABOR CODE §§ 2698 *et. seq.*)**

24 **(By Plaintiff, Aggrieved Employees, and the State of California Against All Defendants)**

25 93. Plaintiff incorporates all of the foregoing paragraphs of this complaint as though
26 fully alleged herein, except those paragraphs uniquely related to class allegations.

94. Under the Labor Code Private Attorneys General Act, Labor Code §§ 2698-99 (“PAGA”), private parties may recover civil penalties for violations of the California Labor Code. PAGA penalties are in addition to any other relief available under the Labor Code.

95. As set forth above, Defendant has committed numerous violations of the California Labor Code by consistently failing to provide Plaintiff and other similarly situated employees with meal periods, rest periods, all owed minimum and overtime wages, reimbursement for business expenses, accurate wage statements, and timely payment of final wages.

96. Plaintiff provided written notice to the Labor and Workforce Development Agency (“LWDA”), through the LWDA’s online submission portal, and to Defendant S. Stamoules, Inc. via certified mail, of the legal claims and theories of this case on February 2, 2021. (Attached hereto as **Exhibit 1** is a true and correct copy of the February 2, 2021 letter and the LWDA’s receipt confirmation). To date, and after 65 days from the date of the mailing of the written notice, the LWDA has not notified Plaintiff that the LWDA intends to exercise jurisdiction over the claim for civil penalties under the PAGA. Accordingly, Plaintiff exhausted the administrative remedies required by Labor Code § 2699.3.

97. Under the Labor Code's Private Attorneys General Act, Plaintiff is entitled to recover the maximum civil penalties permitted by law from Defendants for the Labor Code violations alleged herein.

98. Plaintiff is also entitled to recover his attorney's fees and costs under Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and others similarly situated prays for relief and judgment against Defendant as follows:

1. An order that the action be certified as a class action;
2. An order that Plaintiff be certified as the representative of the Classes;
3. An order that counsel for Plaintiff be confirmed as Class counsel;
4. Judgment in favor of Plaintiff and the putative Classes and against Defendant;

6. Damages for unpaid additional pay owed for late and missed meal periods;
7. Damages for unpaid additional pay owed for rest period violations;
8. That the court determine that the failure of the Defendant to pay premium wages to each member of the Class be adjudged and decreed to violate the applicable IWC Wage Orders, including Wage Order 13 and 14, regulations and statutes;
9. Damages for unpaid minimum wages and liquidated damages;
10. Damages for unpaid overtime wages;
11. Damages for inaccurate wage statements for each relevant pay period;
12. Damages for unpaid wages earned prior to termination of employment;
13. Damages for unpaid continuation wages owed for failing to pay all earned wages timely upon termination of employment;
14. Damages for unreimbursed business expenses;
15. Restitution of all unpaid wages and other monies owed and belonging to Class members that Defendant unlawfully withheld from them and retained for itself;
16. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to aggrieved employees);
17. Prejudgment interest;
18. Reasonable attorneys' fees;
19. Costs of suit; and
20. Such other relief as the Court deems just and proper.

Dated: April 9, 2021

MOSS BOLLINGER LLP

By: 
Jeremy F. Bollinger
Attorneys for Plaintiff Javier Reyes

DEMAND FOR A JURY TRIAL

Plaintiff demands a jury trial on all claims so triable.

Dated: April 9, 2021

MOSS BOLLINGER LLP

By: _____



Jeremy F. Bollinger
Attorneys for Plaintiff Javier Reyes

EXHIBIT 1

to

First Amended Complaint

Reyes v. S. Stamoules, Inc.

Fresno County Superior Court

Case No. 21CECG00557



Moss Bollinger
LLP

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

February 2, 2021

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**

S. Stamoules, Inc. dba Stamoules Produce Company, Inc.
c/o Robert Jones, Agent for Service of Process
2660 W. Shaw Ste.100
Fresno, California 93711

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

Employer: S. Stamoules, Inc. dba Stamoules Produce Company, Inc.

Employee: Javier Reyes, on behalf of himself and on behalf of all current and former non-exempt employees of S. Stamoules, Inc. dba Stamoules Produce Company, Inc.

Dear Secretary Lanier:

Pursuant to the Private Attorney General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative employee, Javier Reyes ("Reyes"), on behalf of himself and all other similarly situated non-exempt California employees ("Aggrieved Employees"), gives notice that his former employer, S. Stamoules, Inc. dba Stamoules Produce Company, Inc. ("Stamoules") violated the California Labor Code throughout Reyes' employment and within the one year prior to the mailing of this letter.

General Facts

Stamoules is a farming business with fields in Fresno, California. Stamoules grows and packages canteloupe, honey dew, watermelon, bell pepper, sweet corn, and broccoli for distribution throughout the United States, Canada and Mexico. Javier Reyes is a former seasonal employee of

Stamoules. He worked in the trailer crew transporting fruit from Stamoules' fields to Stamoules' cooler from July 2020 through the end of the season on October 15, 2020.

During his employment at Stamoules, Reyes 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, Stamoules employed Reyes 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."

Stamoules's time records do not show when employees took a meal period, if any. As a result, Stamoules failed to keep accurate records of employees' start and end times, including meal period times, thereby violating section 7 of Wage Order 14.

As Stamoules failed to keep accurate time records, Stamoules 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 Reyes' employment, Stamoules regularly failed to provide, authorize, and/or permit to Reyes 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, Reyes and other aggrieved employees were required to work shifts lasting over five hours, entitling them to a meal break. Reyes 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.

During Reyes' employment, Stamoules regularly failed to provide, authorize, and/or permit to Reyes and other similarly employed Californian's timely 30-minute meal periods, as required by California law. Depending on the time of year, Reyes and other aggrieved employees began their shifts at either 6:30 a.m. or 7:00 a.m. Regardless of the start shift time, Stamoules made meal periods available at 12:00 p.m. As such, Stamoules provided late meal periods on each day that employees began working before 7:00 a.m. Moreover, Stamoules required individuals working in the field to arrive 5-10 minutes before the start of their scheduled shift time in order to gather gloves, knives, and prepare tractor machinery to gather the produce. These pre-shift tasks constitute hours worked. Due to these unaccounted 5-10 minutes of work time, each meal period (even on days that are scheduled to begin at 7:00 a.m.) is taken after five hours of work and is therefore late and in violation of Labor Code § 512 and the applicable wage order, including Wage Order 14.

Additionally, Stamoules failed to provide uninterrupted meal periods to Trailer Crew employees, like Reyes, who transported produce from the fields to the cooler ("Trailer Crew Employees"). Due to workload, Trailer Crew Employees, like Reyes, had to eat while driving and transporting produce from the fields to Stamoules' cooler. As such, Stamoules violated Labor Code § 512 and the applicable wage order, including Wage Order 14, by failing to provide Trailer Crew Employees with off-the-clock meal periods of at least 30 minutes.

Stamoules failed to pay Reyes and its other employees a meal period premium for each late or missed meal period as required by Labor Code Sections 512, 226.7, and Section 11 of Wage Order 14.

As Stamoules failed to provide timely uninterrupted meal periods, Stamoules 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, Stamoules employed Reyes and other similarly employed individuals subject to Labor Code Sections 1197 and 510.

Under Labor Code Section 1197 and Wage Order 14, Reyes and other aggrieved employees were entitled to receive minimum wages for all hours worked.

Pursuant to Wage Order 14 beginning January 2020, Reyes and other aggrieved employees were entitled to receive overtime wages for all hours worked over 9 hours in a day and over 50 hours in

a week. Beginning January 2021, Reyes and other aggrieved employees are entitled to receive overtime wages for all hours worked over 8.5 hours and over 45 hours in a week.

Stamoules failed to pay all wages for all hours worked in violation of Labor Code Section 1197 and Wage Order 14. Employees working in the fields were required to arrive 5-10 minutes before their scheduled shift time in order to obtain gloves, knives, and any other equipment needed to gather the produce. Employees driving tractors within the field were also required to arrive 5-10 minutes before their scheduled shift to start the engine and allow the tractor's motor to heat up. By performing this pre-shift work, employees could begin gathering produce precisely at the start of their scheduled shift time. However, Stamoules did not pay for these 5-10 minutes of pre-shift work and only paid such aggrieved employees from the beginning of their scheduled shift time. As a result, Stamoules failed to pay the field workers all minimum wages owed, and all overtime wages owed when employees worked more than 9 hours in 2020 and more than 8.5 hours in 2021.

Additionally, on days the Trailer Crew Employees were not provided with an uninterrupted meal period, Stamoules automatically deducted 30 minutes of pay to account for a meal period that was not actually afforded to the Trailer Crew Employees. For instance, if Reyes and the Trailer Crew Employees began their shift at 6:30 a.m. and ended at 5:00 p.m., Reyes was only paid for 10 hours of work instead of the 10.5 hours of work time. Moreover, Reyes and the Trailer Crew Employees were only paid until the end of their shift time. About 3-4 days a week, Reyes and the Trailer Crew Employees were required to work an additional 30-45 minutes of unpaid work as they waited for employees in the cooler to unload the final trailer of the workday. This time was unpaid at the end of a shift. As such, Reyes and other Trailer Crew Employees were not paid for all minimum and overtime hours worked in violation of Labor Code 1197 and Wage Order 14.

As Stamoules failed to pay all minimum and overtime wages properly, Stamoules 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.

Missed Rest Breaks

California law requires that employers 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, Stamoules regularly failed to provide and make rest periods available to Reyes and the Trailer Crew Employees in compliance with California law. Stamoules regularly and systematically required Reyes and the Trailer Crew Employees to work a full shift without any rest periods.

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

As Stamoules failed to provide paid rest periods properly, Stamoules 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.

Failure to Reimburse

Stamoules requires Reyes and the Trailer Crew Employees to wear gloves while they work. Reyes and other Trailer Crew Employees purchased their own gloves and are not reimbursed for these purchases. Reyes purchased 2-3 pairs of gloves per week from July 2020 to October 2020 at \$10-\$15 per pair.

Pursuant to California Labor Code Section 2802:

“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...”

Wage Order 14, Section 9(B) also states that an employer shall provide necessary tools or equipment, except in cases where the employee is paid two times the minimum wage. *See also* California Code of Regulations, Title 8 §3384 (entitled “Hand Protection”, requiring employers to provide gloves).

Here, Reyes is paid \$13.00 an hour. Similarly situated Trailer Crew Employees are also paid less than two times the minimum wage. As such, Stamoules is required to provide all necessary tools and equipment. Moreover, pursuant to Labor Code Section 2802, Stamoules is required to reimburse all necessary expenditures. Here, Stamoules is required to indemnify Reyes and Trailer Crew Employees for gloves purchased in direct consequence of the discharge of their duties. Therefore, Stamoules violated Labor Code Section 2802, by requiring Reyes and the Trailer Crew Employees to purchase their own gloves and failing to reimburse the expense.

Violation of California Paid Sick Leave

All employers in California are required to provide paid sick leave to all employees, unless the employee is exempt from coverage, which Reyes was not. Labor Code § 245.5(b). Employees who work in California for 30 or more days within a year from the commencement of employment are eligible for paid sick leave. Labor Code § 246. An employee is entitled to use accrued paid sick leave on the 90th day of employment. *Id.* An employee who is rehired by the same employer within a year is entitled to the reinstatement of all previously accrued sick leave and may begin to use the sick leave on the first day of rehire. The reason for the employee's initial separation from employment does not matter. Labor Code § 246. Here, Stamoules violated California's paid sick leave law by prohibiting its employees from using accrued paid sick leave when an employee was eligible to use it under the law. Instead, Stamoules told its employees that they must be employed for a year before they can use their accrued sick leave.

As Stamoules failed to comply with California's paid sick leave law, Stamoules 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.

Inaccurate Wage Statements

Reyes and similarly employed Californians received wage statements that did not list all wages earned, including the minimum, overtime, and premium wages discussed above. As the above infractions explain, Reyes and other similarly employed persons were entitled to minimum and/or overtime wages for off-the-clock work. Stamoules' employees were deprived of said wages and received wage statements that did not state all wages earned. Such an omission gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337) and entitles Reyes and other similarly employed individuals to penalty payments pursuant to Labor Code Section 226.

Reyes and other Aggrieved Employees were also 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.").

Unpaid Final Wages

Throughout Reyes' employment, Stamoules employed him and other similarly employed individuals on a seasonal basis. Many employees would often return to work season after season for many years. Some only worked a few or only one season.

Reyes and other similarly employed persons are covered by Labor Code Section 201 and were "discharged" at the end of their seasonal work within the meaning of Labor Code Section 201.

Pursuant to Labor Code Section 201, Stamoules owed Reyes and other similarly employed individuals immediate payment of their final wages at the time of each of their discharges. However, Stamoules did not pay final wages at the time of discharge. Instead, Reyes and other aggrieved employees had to wait over three days to receive their final wages. For example, Reyes' last day of work in 2020 was on October 15, 2020; however, Stamoules did not pay him his final wages until October 20, 2020, five days late. Stamoules therefore maintained a policy or practice of paying seasonally employed persons their final wages without regard for the timing requirement of Labor Code Section 201. Pursuant to Labor Code Section 203, Reyes and other similarly employed individuals are entitled to continuation of their wages, from the day of each discharge they experienced until the wages were paid, up to a maximum of thirty (30) days per discharge.

Moreover, Reyes and other aggrieved employees did not receive all earned wages, and the premium wages for late meal periods and missed rest periods to which they were entitled. Reyes and those similarly situated, upon discharge or termination, did not receive all owed wages on the date of said discharge or termination, or within 72 hours if they resigned. Therefore, Stamoules violated and continues to violate Labor Code Sections 201 and 202, because it has not paid the aforementioned wages and wage premiums.

As Stamoules failed to comply with timing requirements for final pay under the Labor Code, Stamoules 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. Those employees who worked multiple seasons and, therefore, experienced multiple seasonal layoffs, are entitled to multiple penalties under PAGA.

Civil Penalties

As a result of the foregoing, Stamoules is liable for civil penalties as provided for by California law. Consequently, Reyes and all other Aggrieved Employees of Stamoules 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

Stamoules violated and continues to violate the obligation to keep accurate time records, pay all minimum and overtime wages, make available legally compliant meal and rest breaks, issue legally compliant wage statements, reimburse necessary business expenses, comply with California's paid sick leave requirements, and pay all final wages. Reyes requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, Reyes 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

February 2, 2021

Page **8** of **8**

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 blue ink, appearing to read 'J. Bollinger', with a stylized flourish extending to the right.

Jeremy F. Bollinger



Jeremy Bollinger <jeremy@mossbollinger.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Tue, Feb 2, 2021 at 2:54 PM

To: "jeremy@mossbollinger.com" <jeremy@mossbollinger.com>

2/2/2021

LWDA Case No. LWDA-CM-820481-21

Law Firm : Moss Bollinger LLP

Plaintiff Name : Javier Reyes

Employer: S. Stamoules, Inc. dba Stamoules Produce Company, Inc.

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm