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FILED
TULARE COUNTY SUPERIOR COURT
JUDICIAL DIVISION

JUN 29 2021

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

GILBERTO RAMIREZ SANCHEZ,
individually, and on behalf of other
members of the general public similarly
situated,

Plaintiff,

vs.

WAWONA PACKING CO. LLC, a
California limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: VCU286850

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698,
ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq.;

BY FAX

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- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Gilberto Ramirez Sanchez, individually and on behalf of all other members of
2 the public similarly situated, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This class action is brought pursuant to California Code of Civil Procedure
5 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
6 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
7 current and former employees who worked for Defendants in California as non-exempt,
8 hourly paid employees and received at least one wage statement and against whom one or
9 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
10 provision regulating hours and days of work in the applicable Industrial Welfare Commission
11 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
12 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
13 Superior Court and will be established according to proof at trial. This Court has jurisdiction
14 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
15 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
16 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

17 2. This Court has jurisdiction over Defendants because Defendants are either
18 citizens of California, have sufficient minimum contacts in California, or otherwise
19 intentionally avail themselves of the California market so as to render the exercise of
20 jurisdiction over them by the California courts consistent with traditional notions of fair play
21 and substantial justice. There is no basis for federal diversity jurisdiction in this action
22 because there is no complete diversity, and this case falls within the statutory exceptions to
23 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
24 Upon information and belief, two-thirds or more of the class members and Defendants are
25 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
26 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
27 relief is being sought against Defendants whose violations of California wage and hour laws
28 form a significant basis for Plaintiff’s claims; and (d) no other class action has been filed

within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court, because Defendants employ persons within the County of Tulare, and have violated the requirements of the California Labor Code and applicable Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and the applicable Wage Order in at least one location within the County of Tulare, including Defendants' location in Cutler (12133 Avenue 408, Cutler, CA 93615). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Tulare County and Plaintiff could bring this action to recover penalties in Tulare County, venue is proper. *Id.*

THE PARTIES

4. Plaintiff Gilberto Ramirez Sanchez is a resident of Traver, in Tulare County, California. Plaintiff worked for Defendants as an hourly paid, non-exempt General Field Work Laborer at their location in Reedley from approximately April 2020 to May 2020. During his employment, Plaintiff typically worked nine (9) hours or more per day and two (2) to four (4) days per week. Plaintiff's primary job duties included, without limitation, removing excess growth from fruit trees and vines; spraying trees, vines, and grounds with chemical solutions; grafting stock-wood onto trees; and picking fruit.

5. WAWONA PACKING CO. LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

6. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10

1 were the partners, agents, owners, or managers of WAWONA PACKING CO. LLC at all
2 relevant times.

3 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
4 acts and omissions alleged herein was performed by, or is attributable to, WAWONA
5 PACKING CO. LLC and/or DOES 1 through 10 (collectively, “Defendants” or
6 “WAWONA”), each acting as the agent, employee, alter ego, and/or joint venturer of, or
7 working in concert with, each of the other co-Defendants and was acting within the course and
8 scope of such agency, employment, joint venture, or concerted activity with legal authority to
9 act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
10 represent, the official policy of Defendants.

11 9. At all relevant times, Defendants, and each of them, ratified each and every act
12 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
13 and abetted the acts and omissions of each and all the other Defendants in proximately causing
14 the damages herein alleged.

15 10. Plaintiff is informed and believes, and thereon alleges, that each of said
16 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
17 omissions, occurrences, and transactions alleged herein.

18 **GENERAL ALLEGATIONS**

19 11. Defendants are a leading producer and distributor of stone fruit. Upon
20 information and belief, Defendants maintain a single, centralized Human Resources (“HR”)
21 department at their company headquarters in Fresno, California, or in Reedley, California,
22 which is responsible for the recruiting and hiring of new employees, and communicating and
23 implementing Defendants’ company-wide policies, including timekeeping policies and meal
24 and rest period policies, to employees throughout California.

25 12. In particular, Plaintiff and class members, on information and belief, received
26 the same standardized documents and/or written policies. Upon information and belief, the
27 usage of standardized documents and/or written policies, including new-hire documents,
28 indicate that Defendants dictated policies at the corporate level and implemented them

1 company-wide, regardless of their employees' assigned locations or positions. Upon
2 information and belief, Defendants set forth uniform policies and procedures in several
3 documents provided at an employee's time of hire.

4 13. Upon information and belief, Defendants maintain a centralized Payroll
5 department at their company headquarters in Fresno, California, which processes payroll for
6 all non-exempt, hourly paid employees working for Defendants at their various locations and
7 jobsites in California, including Plaintiff and class members. Based upon information and
8 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
9 employees in California, irrespective of their work locations. Upon information and belief,
10 Defendants process payroll for departing employees in the same manner throughout the State
11 of California, regardless of the manner in which each employee's employment ends.

12 14. Defendants continue to employ non-exempt or hourly paid employees in
13 California.

14 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
16 and advisors knowledgeable about California labor and wage law, employment and personnel
17 practices, and about the requirements of California law.

18 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
19 members were not paid for all hours worked because all hours worked were not recorded.

20 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to receive certain wages for
22 overtime compensation and that they were not receiving certain wages for overtime
23 compensation.

24 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to receive at least minimum
26 wages for compensation and that they were not receiving at least minimum wages for work
27 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
28 and class members were not paid at least minimum wages for work done off-the-clock.

1 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
2 or should have known that Plaintiff and class members were entitled to meal periods in
3 accordance with the California Labor Code and applicable IWC Wage Order or payment of
4 one (1) additional hour of pay at their regular rates of pay when they were not provided with
5 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
6 were not provided with all meal periods or payment of one (1) additional hour of pay at their
7 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
8 period.

9 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to rest periods in
11 accordance with the California Labor Code and applicable IWC Wage Order or payment of
12 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
13 permitted to take a compliant rest period. In violation of the Labor Code, Plaintiff and class
14 members were not authorized and permitted to take compliant rest periods, nor did Defendants
15 provide Plaintiff and class members with payment of one (1) additional hour of pay at their
16 regular rates of pay when they were not authorized and permitted to take a compliant rest
17 period.

18 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive complete and
20 accurate wage statements in accordance with California law. In violation of the California
21 Labor Code, Plaintiff and class members were not provided complete and accurate wage
22 statements.

23 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that they had a duty to maintain accurate and complete payroll records in
25 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
26 knowingly, and intentionally failed to do so.

27 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to timely payment of all

1 wages earned upon termination of employment. In violation of the California Labor Code,
2 Plaintiff and class members did not receive payment of all wages due, including, but not
3 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
4 permissible time periods.

5 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to timely payment of wages
7 during their employment. In violation of the California Labor Code, Plaintiff and class
8 members did not receive payment of all wages, including, but not limited to, overtime wages,
9 minimum wages, and/or meal and rest period premiums, within permissible time periods.

10 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive full
12 reimbursement for all business-related expenses and costs they incurred during the course and
13 scope of their employment and that they did not receive full reimbursement of applicable
14 business-related expenses and costs incurred.

15 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants knew or should have known that Defendants had a duty to provide
17 Plaintiff and class members with written notice of the material terms of their employment with
18 Defendants as required by the California Wage Theft Prevention Act, but willfully,
19 knowingly, and intentionally failed to do so.

20 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
21 mentioned, Defendants knew or should have known that they had a duty to compensate
22 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
23 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
24 falsely represented to Plaintiff and class members that they were properly denied wages, all in
25 order to increase Defendants' profits.

26 **PAGA REPRESENTATIVE ALLEGATIONS**

27 28. At all times herein set forth, PAGA provides that any provision of law under
28 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be

1 assessed and collected by the LWDA for violations of the California Labor Code and
2 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
3 civil action brought on behalf of themselves and other current or former employees pursuant
4 to procedures outlined in California Labor Code section 2699.3.

5 29. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
6 person who was employed by the alleged violator and against whom one or more of the
7 alleged violations was committed.”

8 30. Plaintiff and other current and former employees of Defendants are “aggrieved
9 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
10 or former employees and one or more of the alleged violations were committed against them.

11 31. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
12 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
13 following requirements have been met:

14 (a) The aggrieved employee or representative shall give written notice by
15 online filing with the LWDA and by certified mail to the employer of
16 the specific provisions of the California Labor Code alleged to have
17 been violated, including the facts and theories to support the alleged
18 violation.

19 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
20 2699.3(a) and any employer response to that notice shall be
21 accompanied by a filing fee of seventy-five dollars (\$75).

22 (c) The LWDA shall notify the employer and the aggrieved employee or
23 representative by certified mail that it does not intend to investigate the
24 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
25 the postmark date of the aggrieved employee’s notice. Upon receipt of
26 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
27 (65) calendar days of the postmark date of the aggrieved employee’s
28 notice, the aggrieved employee may commence a civil action pursuant

1 to California Labor Code section 2699 to recover civil penalties.

2 32. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
3 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
4 provision other than those listed in Section 2699.5 after the following requirements have been
5 met:

6 (a) The aggrieved employee or representative shall give written notice by
7 online filing with the LWDA and by certified mail to the employer of
8 the specific provisions of the California Labor Code alleged to have
9 been violated (other than those listed in Section 2699.5), including the
10 facts and theories to support the alleged violation.

11 (b) An aggrieved employee's notice filed with the LWDA pursuant to
12 2699.3(c) and any employer response to that notice shall be
13 accompanied by a filing fee of seventy-five dollars (\$75).

14 (c) The employer may cure the alleged violation within thirty-three (33)
15 calendar days of the postmark date of the notice sent by the aggrieved
16 employee or representative. The employer shall give written notice
17 within that period of time by certified mail to the aggrieved employee or
18 representative and by online filing with the LWDA if the alleged
19 violation is cured, including a description of actions taken, and no civil
20 action pursuant to Section 2699 may commence. If the alleged violation
21 is not cured within the 33-day period, the aggrieved employee may
22 commence a civil action pursuant to Section 2699.

23 33. On April 23, 2021, Plaintiff provided written notice by online filing to the
24 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
25 Code alleged to have been violated, including facts and theories to support the alleged
26 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
27 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
28 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned

1 Plaintiff PAGA Case Number LWDA-CM-823110-21. A true and correct copy of Plaintiff's
2 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

3 34. As of the filing date of this complaint, over 65 days have passed since Plaintiff
4 sent the notice described above to the LWDA, and the LWDA has not responded that it
5 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

6 35. Thus, Plaintiff has satisfied the administrative prerequisites under California
7 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
8 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
9 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

10 36. Labor Code section 558(a) provides "[a]ny employer or other person acting on
11 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
12 provision regulating hours and days of work in any order of the Industrial Welfare
13 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
14 dollars (\$50) for each underpaid employee for each pay period for which the employee was
15 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
16 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
17 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
18 to any other civil or criminal penalty provided by law."

19 37. Defendants, at all times relevant to this complaint, were employers or persons
20 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
21 rights by violating various sections of the California Labor Code as set forth above.

22 38. As set forth below, Defendants have violated numerous provisions of both the
23 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
24 Order.

25 39. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
26 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
27 private attorney general, seeks assessment and collection of civil penalties for herself, all other
28 aggrieved employees, and the State of California against Defendants for violations of

California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

41. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

42. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, at any time from March 21, 2020, until the date of trial ("Class").

43. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

44. Members of the Class and Subclass are referred to herein as "class members."

45. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

46. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over the applicable maximum hours per day or maximum hours per week, and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (c) Whether Defendants failed to provide Plaintiff and class members with

- 1 meal periods;
- 2 (d) Whether Defendants failed to authorize and permit Plaintiff and class
- 3 members to take rest periods;
- 4 (e) Whether Defendants provided Plaintiff and class members with
- 5 complete and accurate wage statements as required by California Labor
- 6 Code section 226(a);
- 7 (f) Whether Defendants maintained accurate payroll records as required by
- 8 California Labor Code section 1174(d);
- 9 (g) Whether Defendants failed to pay earned overtime wages, minimum
- 10 wages, and/or meal and rest period premiums due to Plaintiff and class
- 11 members upon their discharge;
- 12 (h) Whether Defendants failed timely to pay overtime wages, minimum
- 13 wages, and/or meal and rest period premiums to Plaintiff and class
- 14 members during their employment;
- 15 (i) Whether Defendants failed to reimburse Plaintiff and class members for
- 16 necessary and required business-related expenditures and/or losses
- 17 incurred by them in the scope of their employment;
- 18 (j) Whether Defendants failed to provide written notice of information
- 19 material to Plaintiff's and class members' employment with Defendants;
- 20 (k) Whether Defendants engaged in unlawful and unfair business practices
- 21 in violation of California Business & Professions Code sections 17200,
- 22 *et seq.*; and
- 23 (l) The appropriate amount of damages, restitution, or monetary penalties
- 24 resulting from Defendants' violations of California law.

25 47. There is a well-defined community of interest in the litigation and the class

26 members are readily ascertainable:

- 27 (a) Numerosity: The class members are so numerous that joinder of all
- 28 members would be unfeasible and impractical. The membership of the

1 entire class is unknown to Plaintiff at this time; however, the class is
2 estimated to be greater than one hundred (100) individuals and the
3 identity of such membership is readily ascertainable by inspection of
4 Defendants' employment records.

5 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
6 protect the interests of each class member with whom he has a well-
7 defined community of interest, and Plaintiff's claims (or defenses, if
8 any) are typical of all class members as demonstrated herein.

9 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
10 protect the interests of each class member with whom he has a well-
11 defined community of interest and typicality of claims, as demonstrated
12 herein. Plaintiff acknowledges that he has an obligation to make known
13 to the Court any relationship, conflicts or differences with any class
14 member. Plaintiff's attorneys, the proposed class counsel, are versed in
15 the rules governing class action discovery, certification, and settlement.
16 Plaintiff has incurred, and throughout the duration of this action, will
17 continue to incur costs and attorneys' fees that have been, are, and will
18 be necessarily expended for the prosecution of this action for the
19 substantial benefit of each class member.

20 (d) Superiority: The nature of this action makes the use of class action
21 adjudication superior to other methods. A class action will achieve
22 economies of time, effort, and expense as compared with separate
23 lawsuits, and will avoid inconsistent outcomes because the same issues
24 can be adjudicated in the same manner and at the same time for the
25 entire class.

26 (e) Public Policy Considerations: Employers in the State of California
27 violate employment and labor laws every day. Current employees are
28 often afraid to assert their rights out of fear of direct or indirect

1 retaliation. Former employees are fearful of bringing actions because
2 they believe their former employers might damage their future
3 endeavors through negative references and/or other means. Class
4 actions provide the class members who are not named in the complaint
5 with a type of anonymity that allows for the vindication of their rights
6 while simultaneously protecting their privacy.

7 **FIRST CAUSE OF ACTION**

8 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**
9 **(Against all Defendants)**

10 48. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
11 and every allegation set forth above.

12 49. California Labor Code section 510 codifies the right to overtime compensation
13 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
14 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
15 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
16 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
17 in a day on the seventh (7th) day of work.

18 50. Labor Code section 1198 makes it illegal to employ an employee under
19 conditions of labor that are prohibited by the applicable wage order. California Labor Code
20 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
21 be the . . . standard conditions of labor for employees. The employment of any employee . . .
22 under conditions of labor prohibited by the order is unlawful.”

23 51. California Labor Code section 1198 and the applicable IWC Wage Order
24 provide that it is unlawful to employ persons without compensating them at a rate of pay
25 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
26 number of hours worked by the person on a daily or weekly basis.

27 52. Specifically, IWC Wage Order 14-2001 provides that, effective January 1,
28 2020, employers are and were required to pay employees working more than nine (9) hours in

1 a day or more than fifty (50) hours in a workweek, at the rate of time and one-half (1 ½) times
2 the regular rate of pay for all hours worked in excess of nine (9) hours in a day or more than
3 fifty (50) hours in a workweek. IWC Wage Order 14-2001 further provides that, starting
4 January 1, 2021, employers are and were required to pay employees working more than eight
5 and one-half (8 ½) hours in a day or more than forty-five (45) hours in a workweek, at the rate
6 of time and one-half (1 ½) for all hours worked in excess of eight and one-half (8 ½) hours in
7 a day or more than forty-five (45) hours in a workweek. An employee's regular rate of pay
8 includes all remuneration for employment paid to, or on behalf of, the employee, including
9 nondiscretionary bonuses and incentive pay.

10 53. During the relevant time period, Defendants willfully failed to pay all overtime
11 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
12 class members were not paid overtime premiums for all of the hours they worked in excess of
13 the applicable maximum hours in a day and/or in excess of the applicable maximum hours in a
14 week, because all hours worked were not recorded.

15 54. First, during the relevant period, Defendants had a company-wide policy and/or
16 practice of failing to accurately record hours worked by their employees and thus restricted
17 overtime accrual. Defendants did not provide employees with any mechanism, such as a
18 handwritten timesheet, time clock, or electronic timekeeping system, to track and record their
19 hours worked. Instead, Defendants had their supervisors input all employee time on
20 handwritten timesheets, and thus maintained exclusive control and discretion over employee
21 punch-in and punch-out times. Thus, Plaintiff and class members could only be clocked in
22 when they physically located their supervisor, but would not be compensated for the time they
23 remained under control of Defendants before their supervisors clocked them in. Moreover, on
24 these timesheets, Defendants' supervisors entered in advance Plaintiff's and class members'
25 shift end-times and meal period start and end times with the hours they were scheduled,
26 instead of their actual hours worked.

27 55. For example, approximately once or twice per week, Defendants required
28 Plaintiff and class members to report to work 30 minutes early to start their tasks, such as

1 grafting stock-wood, before their supervisors clocked them in. As a further example, on
2 several occasions, Plaintiff was required to spend up to 30 minutes after his scheduled shift
3 had ended moving equipment between Defendants' farms, but his supervisors signed him out
4 at his scheduled shift end-time. As result, Defendants did not compensate Plaintiff and class
5 members for this time worked before and after their scheduled shifts. Because Defendants
6 failed to provide Plaintiff and class members with any mechanism to record their actual hours
7 worked themselves and, instead, granted Defendants' supervisors exclusive control and
8 discretion over employee time records, Plaintiff and class members were not paid for all hours
9 worked.

10 56. Second, Defendants' company-wide timekeeping practices and/or policies did
11 not permit employees, including Plaintiff and class members, to accurately track the start and
12 stop times of their meal periods or allow them to report a short, missed, or interrupted meal
13 period. As stated, because Defendants' supervisors logged the start and stop times of meal
14 periods on timesheets which Plaintiff and class members did not have access to, Defendants,
15 upon information and belief, would record that compliant meal periods were taken, even if
16 that was not the case. Alternatively, Defendants implemented a company-wide practice and/or
17 policy of automatically deducting meal periods from Plaintiff's and class members' time
18 records. As a result, because Defendants' supervisors recorded 30-minute meal periods were
19 taken, when meal periods were short, missed, or interrupted, Plaintiff and class members were
20 not paid for all hours worked.

21 57. Third, during the relevant time period, Defendants had, and continue to have, a
22 uniform practice and/or policy of understaffing their locations which resulted in a lack of
23 adequate meal period coverage, because there were too few employees on duty to handle the
24 heavy workload. On information and belief, Defendants also had a practice of failing to
25 schedule meal periods, which further caused Plaintiff and class members to not be relieved of
26 their duties for compliant meal periods. As a result of this lack of meal period coverage,
27 Plaintiff and class members were not always afforded 30-minute meal periods during shifts
28 when they were entitled to receive a meal period. For example, Plaintiff and class members

1 were required to work through meal periods in order to complete their assigned tasks. As
2 another example, Plaintiff was instructed by his supervisor to drive for 10-15 minutes during
3 his meal period to another one of Defendants' locations that needed additional staffing for the
4 day. Consequently, Plaintiff and class members performed work during meal periods for
5 which they were not paid.

6 58. Fourth, Defendants had, and continue to have, a company-wide policy and/or
7 practice of requiring employees to complete work-related duties while off-the-clock, such as
8 responding to communications from supervisors. Defendants required Plaintiff and class
9 members to respond to calls and/or text messages from Defendants' management on their
10 personal cellular phones outside of their scheduled shifts, but did not compensate them for this
11 time. For example, Plaintiff was required to spend 5-10 minutes per day, two days a week,
12 off-the-clock answering phone calls and text messages from his supervisor to discuss work he
13 had completed during his previous shifts. Defendants did not compensate Plaintiff and class
14 members for this time spent working off-the-clock.

15 59. Defendants knew or should have known that as a result of these company-wide
16 practices and/or policies, Plaintiff and class members were performing their assigned duties
17 off-the-clock before and after their shifts and during meal periods, and were suffered or
18 permitted to perform work for which they were not paid. Because Plaintiff and class members
19 worked shifts of nine (9) hours a day or more or fifty (50) hours a week or more and/or shifts
20 of eight and one-half (8 ½) hours a day or more or forty-five (45) hours a week or more, some
21 of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
22 members were not paid overtime wages for all of the overtime hours they actually worked.

23 60. Defendants' failure to pay Plaintiff and class members the balance of overtime
24 compensation as required by California law, violates the provisions of California Labor Code
25 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
26 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
27 and attorneys' fees.

28 **SECOND CAUSE OF ACTION**

**Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)**

61. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

62. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order 14-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11140(2)(G) (defining “Hours Worked”).

63. As set forth above, Defendants’ company-wide policies and/or practices of not permitting employees to record all their hours worked and limiting overtime accrual, Defendants failed to record all hours worked outside of scheduled shifts or during meal periods. Also, as stated above, Defendants maintained a policy and/or practice requiring Plaintiff and class members to perform work off-the-clock prior to clocking in at the start of their shifts and/or after the end of their shifts. Furthermore, due to Defendants’ policies and/or practices of understaffing while assigning heavy workloads and failure to schedule meal periods, Plaintiff and class members were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

64. Defendants did not pay minimum wages for all hours worked by Plaintiff and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

65. Defendants’ failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to

1 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
2 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

3 **THIRD CAUSE OF ACTION**

4 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**
5 **Violations**
6 **(Against all Defendants)**

7 66. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

9 67. At all relevant times herein set forth, California Labor Code section 512(a)
10 provides that an employer may not require, cause, or permit an employee to work for a period
11 of more than five (5) hours per day without providing the employee with a meal period of not
12 less than thirty (30) minutes, except that if the total work period per day of the employee is
13 not more than six (6) hours, the meal period may be waived by mutual consent of both the
14 employer and the employee. Under California law, first meal periods must start after no more
15 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
16 2012).

17 68. At all relevant times herein set forth, California Labor Code sections 226.7,
18 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
19 meal period mandated by an applicable order of the IWC.

20 69. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
21 the applicable IWC Wage Order also require employers to provide a second meal period of
22 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
23 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
24 hours worked is no more than twelve (12) hours, the second meal period may be waived by
25 mutual consent of the employer and the employee only if the first meal period was not waived.

26 70. As described above, Defendants did not have a mechanism in place for
27 employees to track and record the start and stop times of their meal periods. Instead,
28 Defendants gave their supervisors exclusive control and discretion over employee punch-in

1 and punch-out times, including meal period start and stop times. Because Plaintiff and class
2 members did not have access to the timekeeping system, they were unable to record when
3 their meal periods were missed, late, interrupted, or cut short. Alternatively, Defendants
4 implemented a company-wide policy and practice of automatically deducting meal periods
5 from Plaintiff's and class members' time records regardless of whether they had actually
6 received a compliant meal period.

7 71. As also stated above, Defendants had, and continue to have, company-wide
8 policies and/or practices of understaffing their locations while assigning heavy workloads and
9 failing to schedule meal periods, which resulted in a lack of meal period coverage and
10 prevented Plaintiff and class members from taking all timely, uninterrupted meal periods to
11 which they were entitled. Consequently, Plaintiff and class members would be forced to work
12 in excess of five (5) hours before taking a meal period, had their meal periods interrupted,
13 and/or had to forgo their meal periods altogether. For example, when Plaintiff was reassigned
14 to a different location to finish the rest of his shift, he was required to drive to the new
15 location during his unpaid meal periods. Plaintiff and class members also had their meal
16 periods interrupted by supervisors who called them on their personal cellular phones to ask
17 questions and/or were required to work through their meal periods to complete their
18 workloads. Plaintiff and class members did not sign valid meal period waivers on days that
19 they were entitled to meal periods and were not relieved of all duties.

20 72. Moreover, Defendants had a company-wide policy of requiring all newly hired
21 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
22 the position that non-exempt, hourly paid employees had waived their rights to first and
23 second meal periods for the entirety of their employment and, on that basis, did not provide
24 them with all meal periods to which they were entitled. Defendants' company-wide use of
25 blanket meal period waivers signed at or near the time of hire and imposition on employees to
26 revoke the waivers in writing, discouraged and impeded Plaintiff and class members from
27 taking all meal periods to which they were entitled.

28 73. At all times herein mentioned, Defendants knew or should have known that, as

1 a result of their company-wide policies and/or practices, Plaintiff and class members were not
2 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
3 knew or should have known that they did not pay Plaintiff and class members meal period
4 premiums when meal periods were missed, late, short, and/or interrupted.

5 74. Moreover, Defendants engaged in a company-wide practice and/or policy of
6 not paying all meal period premiums owed when compliant meal periods are not provided.
7 Because of Defendants' practices and/or policies, Plaintiff and class members have not
8 received premium pay for all missed, late, and interrupted meal periods. As a result,
9 Defendants failed to provide Plaintiff and class members compliant meal periods in violation
10 of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal
11 period premiums due.

12 75. Defendants' conduct violates the applicable IWC Wage Order, and California
13 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
14 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
15 rate of compensation for each work day that the meal period was not provided.

16 **FOURTH CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 18 **(Against all Defendants)**

19 76. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

21 77. At all relevant times herein set forth, the applicable IWC Wage Order and
22 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
23 members' employment by Defendants.

24 78. At all relevant times, the applicable IWC Wage Order provides that "[e]very
25 employer shall authorize and permit all employees to take rest periods, which insofar as
26 practicable shall be in the middle of each work period" and that the "rest period time shall be
27 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
28 hours or major fraction thereof" unless the total daily work time is less than three and one-half

1 (3 ½) hours.

2 79. At all relevant times, California Labor Code section 226.7 provides that no
3 employer shall require an employee to work during any rest period mandated by an applicable
4 order of the California IWC. To comply with its obligation to authorize and permit rest
5 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
6 employer must “relinquish any control over how employees spend their break time, and
7 relieve their employees of all duties—including the obligation that an employee remain on
8 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
9 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
10 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
11 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
12 that a required rest period was not authorized and permitted.

13 80. During the relevant time period, Defendants regularly failed to authorize and
14 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
15 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
16 practices, including understaffing and assigning of heavy workloads, prevented Plaintiff and
17 class members from being relieved of all duty to take their rest periods. Additionally,
18 Defendants failed to schedule rest periods, which, coupled with Defendants’ failure to provide
19 adequate rest period coverage, further led to Plaintiff and class members not being authorized
20 and permitted to take compliant rest periods.

21 81. Furthermore, upon information and belief, during the relevant time period,
22 Defendants maintained and implemented a company-wide on-premises rest period policy,
23 which mandated that Plaintiff and class members remain on the work premises during their
24 rest periods. Because Plaintiff and class members were restricted from leaving the premises
25 during rest periods, they were denied the ability to use their rest periods freely for their own
26 purposes, such as running personal errands. Thus, Defendants effectively maintained control
27 over Plaintiff and class members during rest periods.

28 82. As a result of Defendants’ practices and policies, Plaintiff and class members

1 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
2 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
3 Plaintiff had some of his rest periods interrupted to respond to telephone calls from
4 supervisors and missed some rest periods entirely in order to complete the work-related duties
5 Defendants assigned to him.

6 83. Defendants have also engaged in a company-wide policy and/or practice of not
7 paying all rest period premiums owed when compliant rest periods are not authorized and
8 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
9 to pay them rest period premiums due, in violation of Labor Code section 226.7, 516, and the
10 applicable IWC Wage Order.

11 84. Defendants' conduct violates the applicable IWC Wage Order and California
12 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
13 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
14 compensation for each work day that a compliant rest period was not authorized and
15 permitted.

16 **FIFTH CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 18 **Statements and Failure to Maintain Accurate Payroll Records** 19 **(Against all Defendants)**

20 85. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 86. At all relevant times herein set forth, California Labor Code section 226(a)
23 provides that every employer shall furnish each of his or her employees an accurate and
24 complete itemized wage statement in writing, including, but not limited to, the name and
25 address of the legal entity that is the employer, the inclusive dates of the pay period, total
26 hours worked, and all applicable rates of pay.

27 87. At all relevant times, Defendants have knowingly and intentionally provided
28 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.

1 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
2 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
3 applicable hourly rates in effect during the pay period, including overtime rates of pay, and
4 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
5 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

6 88. Because Defendants did not record the time Plaintiff and Subclass members
7 spent working off the clock and deducted time from their records for meal periods that were
8 missed and/or interrupted (and therefore time for which they should have been paid),
9 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
10 and Subclass members in compliance with section 226(a)(1) and 226(a)(5). For the same
11 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and
12 Subclass members in violation of section 226(a)(2), and failed to list the applicable hourly
13 rates of pay in effect during the pay period and corresponding accurate number of work hours
14 worked at each hourly rate in violation of section 226(a)(9).

15 89. The wage statement deficiencies also include, without limitation, failing to list
16 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
17 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
18 only the last four digits of his or her social security number or an employee identification
19 number other than a social security number; failing to list the name and address of the legal
20 entity that is the employer; failing to list the inclusive dates of the period for which employees
21 were paid; and/or failing to state all hours worked as a result of not recording or stating hours
22 worked off-the-clock.

23 90. California Labor Code section 1198 provides that the maximum hours of work
24 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
25 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
26 employment of any employees for longer hours than those fixed by the order or under
27 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
28 Wage Order, employers are required to keep accurate time records showing when the

1 employee begins and ends each work period and meal period. During the relevant time
2 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
3 and meal period start and stop times for Plaintiff and Subclass members, in violation of
4 section 1198.

5 91. California Labor Code section 1174(d) provides that “[e]very person employing
6 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
7 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
8 plants or establishments at which employees are employed, payroll records showing the hours
9 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
10 applicable piece rate paid to, employees employed at the respective plants or
11 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
12 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
13 members showing the daily hours they worked and the wages paid thereto as a result of failing
14 to record the off-the-clock hours that they worked.

15 92. Plaintiff and Subclass members are entitled to recover from Defendants the
16 greater of their actual damages caused by Defendants’ failure to comply with California Labor
17 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
18 employee.

19 **SIXTH CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 21 **Termination** 22 **(Against all Defendants)**

23 93. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 94. This cause of action is dependent upon, and wholly derivative of, the overtime
26 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
27 Plaintiff and class members during their employment.

28 95. At all times relevant herein set forth, Labor Code sections 201 and 202 provide

1 that if an employer discharges an employee, the wages earned and unpaid at the time of
2 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
3 her employment, his or her wages shall become due and payable not later than seventy-two
4 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
5 his or her intention to quit, in which case the employee is entitled to his or her wages at the
6 time of quitting.

7 96. Defendants willfully failed to pay Plaintiff and class members who are no
8 longer employed by Defendants the earned and unpaid wages set forth above, including but
9 not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either
10 at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'
11 employ. On information and belief, Defendants also have a company-wide practice or policy
12 of not paying departing employees their final wages on the next regular pay cycle, instead of
13 adhering to the time requirements set forth in Labor Code sections 201 and 202.

14 97. Defendants' failure to pay Plaintiff and class members who are no longer
15 employed by Defendants their wages earned and unpaid at the time of discharge, or within
16 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
17 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
18 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
19 thirty (30) day maximum pursuant to California Labor Code section 203.

20 SEVENTH CAUSE OF ACTION

21 Violation of California Labor Code § 204—Failure to Timely Pay Wages During 22 Employment 23 (Against all Defendants)

24 98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 99. This cause of action is dependent upon, and wholly derivative of, the overtime
27 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
28 Plaintiff and class members during their employment.

100. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

101. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

102. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

103. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

104. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

105. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

1 106. At all times herein set forth, California Labor Code section 2802 provides that
2 an employer must reimburse employees for all necessary expenditures and losses incurred by
3 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
4 to prevent employers from passing off their cost of doing business and operating expenses on
5 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
6 (2014). The applicable wage order, IWC Wage Order 14-2001, provides that: “[w]hen tools
7 or equipment are required by the employer or are necessary to the performance of a job, such
8 tools and equipment shall be provided and maintained by the employer, except that an
9 employee whose wages are at least two (2) times the minimum wage provided herein may be
10 required to provide and maintain hand tools and equipment customarily required by the trade
11 or craft.”

12 107. First, during the relevant time period, Defendants had a company-wide policy
13 of requiring Plaintiff and class members to utilize their own personal cellular phones and
14 cellular data to carry out their job duties, but Defendants failed to fully reimburse them for the
15 costs of their work-related cellular phone expenses. For example, Plaintiff and class members
16 were required to use their personal cellular phones to complete their work-related tasks, such
17 as communicating with Defendants’ management to discuss work-related matters. Although
18 Defendants required Plaintiff and class members to utilize their personal cellular phones to
19 carry out their work-related responsibilities, Defendants failed to fully reimburse them for this
20 cost.

21 108. Second, Defendants had and continue to have, a company-wide policy of
22 requiring Plaintiff and class members to travel in their own personal vehicles to drive to other
23 work locations, but failed to reimburse them for all costs of travel, including mileage. For
24 example, Plaintiff was instructed to drive his own vehicle to Defendants’ other locations both
25 during his shifts to provide additional staffing and after his shifts in order to transfer
26 equipment between farms. Although Defendants required Plaintiff and class members to
27 utilize their own personal vehicles to complete these work-related duties, Defendants never
28 reimbursed them for all of their travel expenses.

1 109. Third, Defendants, on a company-wide basis, required Plaintiff and class
2 members to purchase basic tools that were necessary for the completion of assigned tasks. For
3 example, Plaintiff spent \$60.00 on scissors, pruners, rope, and knives that were needed to
4 complete stock-wood grafts and harvest fruit. Defendants failed to provide these basic tools
5 to Plaintiff and class members, forcing them to procure their own, and failed to reimburse
6 Plaintiff and class members for the costs of these tools.

7 110. Defendants could have provided Plaintiff and class members with the actual
8 tools for use on the job, such as company phones and vehicles and basic tools. Or, Defendants
9 could have reimbursed employees for their cellular phone, mileage, travel, and basic tool
10 expenses. Instead, Defendants passed these operating costs off onto Plaintiff and class
11 members. At all relevant times, Plaintiff did not earn at least two (2) times the minimum
12 wage.

13 111. Defendants' company-wide policy and/or practice of passing on their operating
14 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
15 have intentionally and willfully failed to reimburse Plaintiff and other class members for
16 necessary business-related expenses and costs.

17 112. Plaintiff and class members are entitled to recover from Defendants their
18 business-related expenses incurred during the course and scope of their employment, plus
19 interest.

20 **NINTH CAUSE OF ACTION**

21 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

22 **(Against all Defendants)**

23 113. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 114. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
26 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
27 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
28 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

1 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover
2 civil penalties for violations of those Labor Code sections not found in section 2699.5,
3 including sections 516, 1182.12, and 2810.5.

4 115. Defendants' conduct, as alleged herein, violates numerous sections of the
5 California Labor Code, including, but not limited to, the following:

- 6 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
7 wage order for Defendants' failure to compensate Plaintiff and other
8 aggrieved employees with all required overtime pay and failure to
9 properly calculate the overtime rates paid to Plaintiff and other
10 aggrieved employees, as alleged herein;
- 11 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
12 and the applicable IWC wage order for Defendants' failure to
13 compensate Plaintiff and other aggrieved employees with at least
14 minimum wages for all hours worked, as alleged herein;
- 15 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
16 applicable IWC wage order for Defendants' failure to provide Plaintiff
17 and other aggrieved employees with meal periods, as alleged herein;
- 18 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
19 IWC wage order for Defendants' failure to authorize and permit
20 Plaintiff and other aggrieved employees to take rest periods, as alleged
21 herein;
- 22 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
23 wage order for failure to provide accurate and complete wage statements
24 to Plaintiff and other aggrieved employees, as alleged herein;
- 25 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
26 IWC wage order for failure to maintain payroll records as alleged
27 herein;
- 28 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all

1 earned wages upon termination, as alleged herein;

2 (h) Violation of Labor Code section 204 for failure to pay all earned wages
3 during employment, as alleged herein; and

4 (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
5 and other aggrieved employees for all business expenses necessarily
6 incurred, as alleged herein; and

7 (j) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
8 provide written notice of information material to Plaintiff's and other
9 aggrieved employees' employment with Defendants, as set forth below.

10 116. California's Wage Theft Prevention Act was enacted to ensure that employers
11 provide employees with basic information material to their employment relationship at the
12 time of hiring, and to ensure that employees are given written and timely notice of any
13 changes to basic information material to their employment. Codified at California Labor
14 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
15 employer must provide written notice to employees containing basic and material payroll
16 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
17 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
18 overtime, the regular payday designated by the employer, and any allowances claims as part
19 of the minimum wage, including meal or lodging allowances. Labor Code section
20 2810.5(a)(1)(A)-(C).

21 117. During the relevant time period, Defendants failed to provide Plaintiff and
22 other aggrieved employees with written notice that lists all the requisite information set forth
23 in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and other
24 aggrieved employees with written notice of basic information regarding their employment
25 with Defendants is in violation of Labor Code section 2810.5. Plaintiff and other aggrieved
26 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
27 2699(a), (f), and (g).
28

1 **TENTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

5 118. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 119. Defendants are “persons” as defined by California Business & Professions
8 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 120. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
12 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
13 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

15 121. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business &
17 Professions Code sections 17200, *et seq.*

18 122. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
22 class members, to work overtime without paying them proper
23 compensation in violation of California Labor Code sections 510 and
24 1198 and the applicable IWC Wage Order, as alleged herein;
- 25 (b) Failing to pay at least minimum wage to Plaintiff and class members in
26 violation of California Labor Code sections 1182.12, 1194, 1197,
27 1197.1, and 1198 and the applicable IWC Wage Order, as alleged
28 herein;

- 1 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
2 members in violation of California Labor Code sections 226.7, 512(a),
3 516, 1198, and the applicable IWC Wage Order, as alleged herein;
- 4 (d) Failing to authorize and permit Plaintiff and class members to take
5 uninterrupted rest periods in violation of California Labor Code sections
6 226.7, 516, 1198, and the applicable IWC Wage Order, as alleged
7 herein;
- 8 (e) Failing to provide Plaintiff and class members with accurate wage
9 statements and failing to maintain accurate payroll records in violation
10 of California Labor Code sections 226(a), 1174(d), 1198, and the
11 applicable IWC Wage Order, as alleged herein;
- 12 (f) Failing timely to pay all earned wages to Plaintiff and class members in
13 violation of California Labor Code section 204, as alleged herein;
- 14 (g) Failing to reimburse Plaintiff and class members for all business
15 expenses necessarily incurred in violation of California Labor Code
16 section 2802, as alleged herein; and
- 17 (h) Failing to provide written notice of information material to Plaintiff's
18 and class members' employment with Defendants in violation of Labor
19 Code section 2810.5(a)(1)(A)-(C), as set forth below.

20 123. At all relevant times herein, California's Wage Theft Prevention Act was
21 enacted to ensure that employers provide employees with basic information material to their
22 employment relationship at the time of hiring, and to ensure that employees are given written
23 and timely notice of any changes to basic information material to their employment. Codified
24 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
25 time of hiring, an employer must provide written notice to employees containing basic and
26 material payroll information, including, among other things, the rate(s) of pay and basis
27 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
28 including any rates for overtime, the regular payday designated by the employer, and any

allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

124. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and class members that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and class members with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5.

125. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

126. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

127. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

128. Defendants are "persons" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

129. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered

injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

130. Defendants’ activities, namely Defendants’ company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

131. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants’ policies and practices have violated the spirit of California’s meal and rest period laws and constitute acts against the public policy behind these laws.

132. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

1 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
2 against Defendants, jointly and severally, as follows:

3 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
4 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
5 reserves the right to amend his prayer for relief to seek a different amount.

6 **Class Certification**

7 2. That this case be certified as a class action;

8 3. That Plaintiff be appointed as the representative of the Class and Subclass;

9 4. That counsel for Plaintiff be appointed as class counsel.

10 **As to the First Cause of Action**

11 5. That the Court declare, adjudge, and decree that Defendants violated California
12 Labor Code sections 510 and 1198 and applicable IWC Wage Order by willfully failing to pay
13 all overtime wages due to Plaintiff and class members;

14 6. For general unpaid wages at overtime wage rates and such general and special
15 damages as may be appropriate;

16 7. For pre-judgment interest on any unpaid overtime compensation commencing
17 from the date such amounts were due, or as otherwise provided by law;

18 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
19 California Labor Code section 1194(a); and

20 9. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Second Cause of Action**

23 10. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
25 minimum wages to Plaintiff and class members;

26 11. For general unpaid wages and such general and special damages as may be
27 appropriate;

28 12. For pre-judgment interest on any unpaid compensation from the date such

1 amounts were due, or as otherwise provided by law;

2 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
3 California Labor Code section 1194(a);

4 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

5 15. For such other and further relief as the Court may deem equitable and
6 appropriate.

7 **As to the Third Cause of Action**

8 16. That the Court declare, adjudge, and decree that Defendants violated California
9 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order by
10 willfully failing to provide all meal periods to Plaintiff and class members;

11 17. That the Court make an award to the Plaintiff and class members of one (1)
12 hour of pay at each employee's regular rate of pay for each workday that a meal period was
13 not provided;

14 18. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 19. For premiums pursuant to California Labor Code section 226.7(c);

17 20. For pre-judgment interest on any unpaid meal period premiums from the date
18 such amounts were due, or as otherwise provided by law;

19 21. For attorneys' fees pursuant to California Code of Civil Procedure section
20 1021.5, or as otherwise provided by law; and

21 22. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 **As to the Fourth Cause of Action**

24 23. That the Court declare, adjudge and decree that Defendants violated California
25 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Order by willfully
26 failing to authorize and permit Plaintiff and class members to take all rest periods;

27 24. That the Court make an award to the Plaintiff and class members of one (1) hour
28 of pay at each employee's regular rate of pay for each workday that a rest period was not

1 authorized and permitted;

2 25. For all actual, consequential, and incidental losses and damages, according to
3 proof;

4 26. For premiums pursuant to California Labor Code section 226.7(c);

5 27. For pre-judgment interest on any unpaid rest period premiums from the date
6 such amounts were due, or as otherwise provided by law;

7 28. For attorneys' fees pursuant to California Code of Civil Procedure section
8 1021.5, or as otherwise provided by law; and

9 29. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Fifth Cause of Action**

12 30. That the Court declare, adjudge and decree that Defendants violated the
13 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
14 Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized
15 wage statements thereto;

16 31. For all actual, consequential, and incidental losses and damages, according to
17 proof;

18 32. For injunctive relief pursuant to California Labor Code section 226(h);

19 33. For statutory penalties pursuant to California Labor Code section 226(e);

20 34. For attorneys' fees and costs pursuant to California Labor Code section
21 226(e)(1); and

22 35. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Sixth Cause of Action**

25 36. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
27 and/or meal and rest period premiums owed at the time of termination of the employment of
28 Plaintiff and other terminated class members;

1 37. For all actual, consequential and incidental losses and damages, according to
2 proof;

3 38. For waiting time penalties according to proof pursuant to California Labor
4 Code section 203 for all employees who have left Defendants' employ;

5 39. For pre-judgment interest on any unpaid wages from the date such amounts
6 were due, or as otherwise provided by law;

7 40. For attorneys' fees pursuant to California Code of Civil Procedure section
8 1021.5, or as otherwise provided by law; and

9 41. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Seventh Cause of Action**

12 42. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
14 overtime wages, minimum wages, and/or meal and rest period premiums during their
15 employment;

16 43. For all actual, consequential and incidental losses and damages, according to
17 proof;

18 44. For statutory penalties according to proof pursuant to California Labor Code
19 section 210;

20 45. For pre-judgment interest on any unpaid wages from the date such amounts
21 were due, or as otherwise provided by law;

22 46. For attorneys' fees pursuant to California Code of Civil Procedure section
23 1021.5, or as otherwise provided by law; and

24 47. For such other and further relief as the Court may deem equitable and
25 appropriate.

26 **As to the Eighth Cause of Action**

27 48. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-

related expenses and costs incurred by Plaintiff and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

1. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of information material to employment);

2. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

3. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California

Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

4. For pre-judgment and post-judgment interest as provided by law; and

5. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

6. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, failing to reimburse Plaintiff and class members for business-related expenses, and failing to provide written notice of information material to employment, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

7. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

8. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

9. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

10. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

11. That the Court declare, adjudge and decree that Defendants' conduct of denying

1 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
2 an unfair business practice in violation of California Business and Professions Code sections
3 17200, *et seq.*;

4 12. For restitution of the statutory benefits under section 226.7 unfairly withheld
5 from Plaintiff and class members and prejudgment interest from the day such amounts were
6 due and payable;

7 13. For the appointment of a receiver to receive, manage and distribute any and all
8 funds disgorged from Defendants and determined to have been wrongfully acquired by
9 Defendants as a result of violations of California Business & Professions Code sections
10 17200, *et seq.*;

11 14. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
12 California Code of Civil Procedure section 1021.5;

13 15. For pre-judgment and post-judgment interest as provided by law; and

14 16. For such other and further relief as the Court may deem equitable and
15 appropriate.

16
17 Dated: June 29, 2021

Respectfully submitted,

Capstone Law APC

18
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20 By: 

Mark A. Ozzello
Brandon K. Brouillette
Joseph Hakakian

21
22 Attorneys for Plaintiff Gilberto Ramirez
23 Sanchez
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25
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27
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EXHIBIT 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

April 23, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Gilberto Ramirez Sanchez v. Wawona Packing Co. LLC*

Dear PAGA Administrator:

This office represents Gilberto Ramirez Sanchez in connection with his claims under the California Labor Code. Mr. Ramirez Sanchez was an employee of WAWONA PACKING CO. LLC ("WAWONA").

The employer may be contacted directly at the address below:

WAWONA PACKING CO. LLC
7108 N FRESNO STREET STE 450
FRESNO CA 93720

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

WAWONA employed Mr. Ramirez Sanchez as an hourly paid, non-exempt General Field Work Laborer from approximately April 2020 to May 2020. Mr. Ramirez Sanchez worked for WAWONA at its location in Reedley, California. During his employment, Mr. Ramirez Sanchez typically worked nine (9) hours or more per day and two (2) to four (4) days per week. At the time Mr. Ramirez Sanchez's employment with WAWONA ended, he earned approximately \$14.00 per hour. His job duties included, without limitation, removing excess growth from fruit trees and vines; spraying trees, vines, and grounds with chemical solutions; grafting stock-wood onto trees; and picking fruit.

WAWONA committed one or more of the following Labor Code violations against Mr. Ramirez Sanchez, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

WAWONA’s Company-Wide and Uniform Payroll and HR Practices

WAWONA PACKING CO. LLC is a California limited liability company and a leading producer and distributor of stone fruit. Upon information and belief, WAWONA maintains a single, centralized Human Resources (HR) department at its company headquarters in Fresno or Reedley, California for all non-exempt, hourly paid employees working for WAWONA in California, including Mr. Ramirez Sanchez and other aggrieved employees. At all relevant times, WAWONA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Ramirez Sanchez and other aggrieved employees, regardless of its location or position.

Upon information and belief, WAWONA maintains a centralized Payroll department at its company headquarters in Fresno, California which processes payroll for all non-exempt, hourly paid employees working for WAWONA in California, including Mr. Ramirez Sanchez and other aggrieved employees. Further, WAWONA issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Ramirez Sanchez and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, WAWONA utilized the same methods and formulas when calculating wages due to Mr. Ramirez Sanchez and other aggrieved employees in California.

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

California Labor Code section 510 requires employers to pay employees at the overtime rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

Specifically, IWC Wage Order 14-2001 provides that, effective January 1, 2020, employers are and were required to pay employees working more than nine (9) hours in a day or more than fifty (50) hours in a workweek, at the rate of time and one-half (1 ½) times the regular rate of pay for all hours

¹ These facts, theories, and claims are based on Mr. Ramirez Sanchez’s experience and counsel’s review of those records currently available relating to Mr. Ramirez Sanchez’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Ramirez Sanchez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

worked in excess of nine (9) hours in a day or more than fifty (50) hours in a workweek. IWC Wage Order 14-2001 further provides that, starting January 1, 2021, employers are and were required to pay employees working more than eight and one-half (8 ½) hours in a day or more than forty-five (45) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight and one-half (8 ½) hours in a day or more than forty-five (45) hours in a workweek. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

WAWONA willfully failed to pay all overtime wages owed to Mr. Ramirez Sanchez and other aggrieved employees. During the relevant time period, Mr. Ramirez Sanchez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of the applicable maximum hours in a day and/or in excess of the applicable maximum hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, WAWONA had a company-wide policy and/or practice of failing to accurately record hours worked by its employees and thus restricted overtime accrual. WAWONA did not provide employees with any mechanism, such as a handwritten timesheet, time clock, or electronic timekeeping system, to track and record their hours worked. Instead, WAWONA had its supervisors input all employee time on handwritten timesheets, and thus maintained exclusive control and discretion over employee punch-in and punch-out times. Thus, Mr. Ramirez Sanchez and other aggrieved employees could only be clocked in when they physically located their supervisor, but would not be compensated for the time they remained under control of WAWONA before their supervisors clocked them in. Moreover, on these timesheets, WAWONA's supervisors entered in advance Mr. Ramirez Sanchez's and other aggrieved employees' shift end-times and meal period start and end times with the hours they were scheduled, instead of their actual hours worked.

For example, approximately once or twice per week, WAWONA required Mr. Ramirez Sanchez and other aggrieved employees to report to work 30 minutes early to start their tasks, such as grafting stock-wood, before their supervisors clocked them in. As a further example, on several occasions, Mr. Ramirez Sanchez was required to spend up to 30 minutes after his scheduled shift had ended moving equipment between WAWONA's farms, but his supervisors signed him out at his scheduled shift end-time. As result, WAWONA did not compensate Mr. Ramirez Sanchez and other aggrieved employees for this time worked before and after their scheduled shifts. Because WAWONA failed to provide Mr. Ramirez Sanchez and other aggrieved employees with any mechanism to record their actual hours worked themselves and, instead, granted WAWONA's supervisors exclusive control and discretion over employee time records, Mr. Ramirez Sanchez and other aggrieved employees were not paid for all hours worked.

Second, WAWONA's company-wide timekeeping practices and/or policies did not permit employees, including Mr. Ramirez Sanchez and other aggrieved employees, to accurately track the start and stop times of their meal periods or allow them to report a short, missed, or interrupted meal period. As stated, because WAWONA's supervisors logged the start and stop times of meal periods on timesheets which Mr. Ramirez Sanchez and other aggrieved employees did not have access to, WAWONA, upon information and belief, would record that compliant meal periods were taken, even if that was not the case. Alternatively, WAWONA implemented a company-wide practice and/or policy of automatically deducting meal periods from Mr. Ramirez Sanchez's and other aggrieved employees' time records. As a result, because WAWONA's supervisors recorded 30-minute meal periods were taken, even when meal periods were short, missed, or interrupted, Mr. Ramirez Sanchez and other aggrieved employees were not paid for all hours worked.

Third, during the relevant time period, WAWONA had, and continues to have, a uniform practice and/or policy of understaffing its locations which resulted in a lack of adequate meal period coverage, because there were too few employees on duty to handle the heavy workload. On information and belief, WAWONA also had a practice of failing to schedule meal periods, which further caused Mr. Ramirez Sanchez and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Mr. Ramirez Sanchez and other aggrieved employees were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Ramirez Sanchez and other aggrieved employees were required to work through meal periods in order to complete their assigned tasks. As another example, Mr. Ramirez Sanchez was instructed by his supervisor to drive for 10-15 minutes during his meal period to another one of WAWONA's locations that needed additional staffing for the day. Consequently, Mr. Ramirez Sanchez and other aggrieved employees performed work during meal periods for which they were not paid.

Fourth, WAWONA had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related duties while off-the-clock, such as responding to communications from supervisors. WAWONA required Mr. Ramirez Sanchez and other aggrieved employees to respond to calls and/or text messages from WAWONA's management on their personal cellular phones outside of their scheduled shifts, but did not compensate them for this time. For example, Mr. Ramirez Sanchez was required to spend 5-10 minutes per day, two days a week, off-the-clock answering phone calls and text messages from his supervisor to discuss work he had completed during his previous shifts. WAWONA did not compensate Mr. Ramirez Sanchez and other aggrieved employees for this time spent working off-the-clock.

WAWONA knew or should have known that as a result of these company-wide practices and/or policies, Mr. Ramirez Sanchez and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Ramirez Sanchez and other aggrieved employees worked shifts of nine (9) hours a day or more or fifty (50) hours a week or more and/or shifts of eight and one-half (8 ½) hours a day or more or forty-five (45) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Ramirez Sanchez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, WAWONA did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, WAWONA paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, WAWONA failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, WAWONA failed to pay all overtime wages by paying a lower overtime rate than required.

WAWONA's failure to pay Mr. Ramirez Sanchez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Ramirez Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 14-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11140(2)(G) (defining “Hours Worked”).

As set forth above, WAWONA’s company-wide policies and/or practices of not permitting employees to record all their hours worked and limiting overtime accrual, WAWONA failed to record all hours worked outside of scheduled shifts or during meal periods. Also, as stated above, WAWONA maintained a policy and/or practice requiring Mr. Ramirez Sanchez and other aggrieved employees to perform work off-the-clock prior to clocking in at the start of their shifts and/or after the end of their shifts. Furthermore, due to WAWONA’s policies and/or practices of understaffing while assigning heavy workloads and failure to schedule meal periods, Mr. Ramirez Sanchez and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

Thus, WAWONA did not pay at least minimum wages for all hours worked by Mr. Ramirez Sanchez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, WAWONA did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1.

Accordingly, WAWONA regularly failed to pay at least minimum wages to Mr. Ramirez Sanchez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Ramirez Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee’s regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As described above, WAWONA did not have a mechanism in place for employees to track and record the start and stop times of their meal periods. Instead, WAWONA gave its supervisors exclusive control and discretion over employee punch-in and punch-out times, including meal period start and stop times. Because Mr. Ramirez Sanchez and other aggrieved employees did not have access to the timekeeping system, they were unable to record when their meal periods were missed, late, interrupted, or cut short. Alternatively, WAWONA implemented a company-wide policy and practice of automatically deducting meal periods from Mr. Ramirez Sanchez's and other aggrieved employees' time records regardless of whether they had actually received a compliant meal period.

As also stated above, WAWONA had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads and failing to schedule meal periods, which resulted in a lack of meal period coverage and prevented Mr. Ramirez Sanchez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Consequently, Mr. Ramirez Sanchez and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, when Mr. Ramirez Sanchez was reassigned to a different location to finish the rest of his shift, he was required to drive to the new location during his unpaid meal periods. Mr. Ramirez Sanchez and other aggrieved employees also had their meal periods interrupted by supervisors who called them on their personal cellular phones to ask questions and/or were required to work through their meal periods to complete their workloads.

Additionally, WAWONA did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Ramirez Sanchez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, WAWONA had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. WAWONA took the position that non-exempt, hourly paid employees had waived their rights to first and second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. WAWONA's company-wide use of blanket meal period waivers signed at or near the time of hire and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Ramirez Sanchez and other aggrieved employees from taking all meal periods to which they were entitled.

WAWONA knew or should have known that as a result of its policies and/or practices, that Mr. Ramirez Sanchez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. WAWONA further knew or should have known that it did not pay Mr. Ramirez Sanchez and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

Furthermore, WAWONA engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Ramirez Sanchez and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that WAWONA did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, WAWONA did not pay other aggrieved employees at the correct rate of pay for premiums because WAWONA systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, WAWONA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Ramirez Sanchez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

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

During the relevant time period, WAWONA regularly failed to authorize and permit Mr. Ramirez Sanchez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, WAWONA's company-wide practices, including understaffing and assigning of heavy workloads, prevented Mr. Ramirez Sanchez and other aggrieved employees from being relieved of all duty to take their rest periods. Additionally, WAWONA failed to schedule rest periods, which, coupled with WAWONA's failure to provide adequate rest period coverage, further led to Mr. Ramirez Sanchez and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, upon information and belief, during the relevant time period, WAWONA maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Ramirez Sanchez and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Ramirez Sanchez and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, WAWONA effectively maintained control over Mr. Ramirez Sanchez and other aggrieved employees during rest periods.

As a result of WAWONA's practices and policies, Mr. Ramirez Sanchez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Ramirez Sanchez had some of his rest periods interrupted to respond to telephone calls from supervisors and missed some rest periods entirely in order to complete the work-related duties WAWONA assigned to him.

WAWONA also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that WAWONA did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, WAWONA did not pay other aggrieved employees at the correct rate of pay for premiums because WAWONA failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, WAWONA failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Ramirez Sanchez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. WAWONA has not provided Mr. Ramirez Sanchez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, WAWONA has knowingly and intentionally provided Mr. Ramirez Sanchez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, WAWONA issued uniform wage statements to Mr. Ramirez Sanchez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, WAWONA violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because WAWONA did not record the time Mr. Ramirez Sanchez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), WAWONA did not list the correct amount of gross wages and net wages earned by Mr. Ramirez Sanchez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, WAWONA failed to accurately list the total number of hours worked by Mr. Ramirez Sanchez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because WAWONA did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, WAWONA did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, WAWONA also failed to list the correct amount of net wages in violation of section 226(a)(5). WAWONA also failed to correctly list all

applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, WAWONA failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Ramirez Sanchez and other aggrieved employees, in violation of section 1198. Furthermore, in light of WAWONA’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, WAWONA kept no records of meal start and end times for second meal periods.

Because WAWONA failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Ramirez Sanchez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Ramirez Sanchez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Ramirez Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

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

During the relevant time period, WAWONA willfully failed to pay Mr. Ramirez Sanchez and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

Mr. Ramirez Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

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

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

WAWONA willfully failed to pay Mr. Ramirez Sanchez and other aggrieved employees who are no longer employed by WAWONA the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving WAWONA's employ. On information and belief, WAWONA also has a company-wide practice or policy of not paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202.

Mr. Ramirez Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code

section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 14-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, WAWONA had a company-wide policy of requiring Mr. Ramirez Sanchez and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but WAWONA failed to fully reimburse them for the costs of their work-related cellular phone expenses. For example, Mr. Ramirez Sanchez and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as communicating with WAWONA's management to discuss work-related matters. Although WAWONA required Mr. Ramirez Sanchez and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, WAWONA failed to fully reimburse them for this cost.

Second, WAWONA had and continues to have, a company-wide policy of requiring Mr. Ramirez Sanchez and other aggrieved employees to travel in their own personal vehicles to drive to other work locations, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Ramirez Sanchez was instructed to drive his own vehicle to WAWONA's other locations both during his shifts to provide additional staffing and after his shifts to transfer equipment between farms. Although WAWONA required Mr. Ramirez Sanchez and other aggrieved employees to utilize their own personal vehicles to complete these work-related duties, WAWONA never reimbursed them for all of their travel expenses.

Third, WAWONA, on a company-wide basis, required Mr. Ramirez Sanchez and other aggrieved employees to purchase basic tools that were necessary for the completion of assigned tasks. For example, Mr. Ramirez Sanchez spent \$60.00 on scissors, pruners, rope, and knives that were needed to complete stock-wood grafts and harvest fruit. WAWONA failed to provide these basic tools to Mr. Ramirez Sanchez and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Ramirez Sanchez and other aggrieved employees for the costs of these tools.

WAWONA could have provided Mr. Ramirez Sanchez and other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, and basic tools. Or, WAWONA could have reimbursed employees for their cellular phones, mileage, travel, and basic tool expenses. Instead, WAWONA passed these operating costs off onto Mr. Ramirez Sanchez and other aggrieved employees. At all relevant times, Mr. Ramirez Sanchez did not earn at least two (2) times the minimum wage.

Thus, WAWONA had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Ramirez Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

WAWONA failed to provide Mr. Ramirez Sanchez and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). WAWONA's failure to provide Mr. Ramirez Sanchez and other aggrieved employees with written notice of basic information regarding their employment with WAWONA is in violation of Labor Code section 2810.5.

Mr. Ramirez Sanchez and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Mr. Ramirez Sanchez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Ramirez Sanchez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against WAWONA for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Ramirez Sanchez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

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

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Anthony Castillo

Copy: WAWONA PACKING CO. LLC (via U.S. Certified Mail)

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067. My electronic address is matthew.krout@capstonelawyers.com.

On **June 29, 2021**, I served the document(s) described as:

FIRST AMENDED COMPLAINT

on the interested parties in this action by sending ☐ the original ☒ a true copy thereof ☐ to interested parties as follows ☐ ☒ as stated on the attached service list:

**Daniel Gerawan
Prima Wawona
Agent for Service of Process for
WAWONA PACKING CO.
7108 N. Fresno Street, Suite 450
Fresno, CA 93720**

Registered Agent for WAWONA PACKING CO. LLC

- ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- ☒ **BY PERSONAL SERVICE/PROCESS SERVER:** I caused the document to be delivered by hand to the offices of the addressee(s) named herein via process server/messenger for Attorney Service Prolegal/Procourier.
- ☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **June 29, 2021**, at Los Angeles, California.

Matthew Krout
Type or Print Name


Signature