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Attorneys for Plaintiff,
SALVADOR RAMOS LOPEZ on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

SALVADOR RAMOS LOPEZ, an individual,
on behalf of himself, all aggrieved employees,
and the State of CA as a Private Attorneys
General,

Plaintiffs,

vs.

TORRES FARM LABOR CONTRACTOR,
INC., a California corporation and DOES 1-50,
inclusive,

Defendants.

) Case No.: BCV-21-102096

) **REPRESENTATIVE ACTION**
) **COMPLAINT**

) **Violation of the Private Attorneys General**
) **Act of 2004, Cal. Labor Code §2698 *et seq.***

Plaintiff SALVADOR RAMOS LOPEZ brings this PAGA representative action
complaint on behalf of himself, all aggrieved employees, and the State of California as a Private
Attorneys General, and alleges as follows:

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**REPRESENTATIVE ACTION
COMPLAINT**

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INC., a California corporation and DOES 1-50,
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Defendants.

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

Plaintiff SALVADOR RAMOS LOPEZ brings this PAGA representative action
complaint on behalf of himself, all aggrieved employees, and the State of California as a Private
Attorneys General, and alleges as follows:

NATURE OF THE ACTION

1
2 1. Plaintiff SALVADOR RAMOS LOPEZ was a warehouse worker for defendant
3 TORRES FARM LABOR CONTRACTOR, INC. and DOES 1-50 (collectively “Defendants”).
4 Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal.
5 Labor Code §2698 *et seq.*, on a representative basis. All current and former hourly, non-exempt
6 employees of Defendants in California within one year of serving notice on the LWDA to the
7 present are aggrieved employees.

8 2. Defendants failed to comply with California Labor Code requirements due to
9 erroneous, willful and intentional employment practices and policies. Plaintiff brings this
10 representative action on behalf of himself, all other similarly situated aggrieved employees, and
11 the State of California, based upon the claims articulated below. Plaintiff provided notice of his
12 claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency
13 (“LWDA”) as illustrated by the attached Exhibit. The LWDA has not provided any notice to
14 Plaintiff following the exhaustion of the 65-day notice period required by §2699.3(a)(2)(B).
15 Accordingly, Plaintiff now brings this Complaint for civil penalties under the Private Attorneys
16 General Act (“PAGA”), Labor Code §2698 *et seq.*

17 3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all
18 hours worked, including COVID-19 supplemental paid sick leave, (2) failing to pay minimum
19 wage, (3) failing to provide safe working conditions, (4) failing to pay all wages owed, and (5)
20 failing to keep proper paystub records.

THE PARTIES

21
22 7. Plaintiff SALVADOR RAMOS LOPEZ is a resident of the State of California and was
23 employed as an hourly, nonexempt employee of Defendants until February of 2021.

24 8. Defendant TORRES FARM LABOR CONTRACTOR, INC. is doing business in
25 California with the capacity to sue and to be sued in the county of Kern, State of California.

26 9. Plaintiff is unaware of the true names, capacities, relationships, and extent of
27 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is
28 informed and believes and thereon alleges that said Defendants are legally responsible for the

wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names, Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

10. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees of the representative class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

11. Venue is proper in this judicial district because Defendants conduct business in this county and each defendant has legal obligations to Plaintiff and many of the aggrieved employees in this case that arose in this county.

12. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

13. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendants are qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

14. During the relevant time-period, Defendants committed various violations of the California Labor Code as alleged below in more detail. Defendants enforced multiple policies that violate state law, which are intended to increase profits to the detriment of aggrieved employees.

1 15. Defendant TORRES FARM LABOR CONTRACTOR, INC. is a labor contractor for
2 the farming and labor industry, located in the city of Bakersfield. This representative action
3 represents over one hundred current and former aggrieved employees.

4 16. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
5 to the present, Defendants engaged in unlawful employment practices that resulted in violations of
6 numerous Labor Code sections, as set forth more fully below.

7 17. Plaintiff and all current and former employees within one year of filing this action to
8 the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor
9 code §2699(c)).

10 18. Defendants, and each of them, have committed the following violations of the
11 California Labor Code:

12 **Failure to Comply with California Law Concerning Payment of Lawful Wage for All**
13 **Hours Worked, Including Overtime Hours Worked**

14 (Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*, Executive Order N-51-
15 20 and SB 95)

16 19. Plaintiff reasserts and alleges all preceding paragraphs as if fully set forth and
17 incorporate said paragraphs herein by reference.

18 20. Section 2(H) of Wage Orders 13 & 14 defines “hours worked” as “the time during
19 which an employee is subject to the control of an employer, and including all the time the
20 employee is suffered or permitted to work, whether or not required to do so.” When employers
21 require employees to engage in temperature checks and hand washing which took place off the
22 clock, the result is underpayment for hours worked each pay period, including overtime hours
23 worked. Defendants have also failed to pay the required minimum wage for all hours worked,
24 and have failed to pay all wages owed twice per month.

25 21. Off-the-Clock Hours Worked – Temperature Checks and Washing. Plaintiff and
26 aggrieved employees frequently worked off the clock and were routinely subjected to periods
27 wherein they were under the Defendants’ control but not compensated for their time. There were
28 mandatory temperature checks and washing which took place off the clock. This time spent

1 partaking in required temperature checks and washing was required by Defendants and was
2 essential and required before employees could begin and/or resume working on the clock.
3 Defendants have violated Labor Code §§510, 1194, 1198, 1199, and Wage Order 13 & 14.
4 Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

5 22. Failure to Include Shift Differential in Regular Rate of Pay for Calculating Overtime.

6 Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by
7 employees of every description, whether the amount is fixed or ascertained by the standard of
8 time, task, piece, commission basis, or other method of calculation.” Defendants fail to include
9 shift differential pay into the regular rate of pay for purposes of calculating overtime.

10 23. The “regular rate” is calculated by dividing the hours worked in a week by all the
11 compensation earned for that week. Labor Code §510. Shift differentials, or additional pay for
12 working less preferred shifts, must be added into the total compensation for the week, increasing
13 the employee’s regular rate of pay. Overtime paid to Plaintiff on his wage statements evidence
14 that shift differentials are excluded.

15 24. Defendants have failed to properly calculate and pay overtime compensation, making
16 no adjustment to overtime rates reflected in any of Plaintiff or aggrieved employees’ paystubs.
17 Plaintiff and other employees have been denied “the unpaid balance of the full amount of this...
18 overtime compensation” as required by Cal. Labor Code. §1194. Additionally, Defendants have
19 violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage
20 Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a
21 violation of the labor code to fail to comply with a wage order.

22 25. Failure to Pay COVID-19 Supplemental Paid Sick Leave. Pursuant to Labor Code
23 §1197, “[t]he minimum wage for employees fixed by the commission or by any applicable state
24 or local law, is the minimum wage to be paid to employees, and the payment of a lower wage
25 than the minimum so fixed is unlawful.” In addition, SB 95 is legislation which ensures access to
26 up to 80 hours of COVID-19 supplemental paid sick leave for eligible employees, including
27 those advised to quarantine or isolate and those caring for COVID-impacted family members. In
28 the case of COVID-19, Executive Order N-51-20 as well as SB 95, require that employers

1 provide 80 hours of paid sick leave to full time employees. Under the Executive Order food
2 sector workers (this includes those who work in food packing facilities like Defendants') who
3 work full time are entitled to 80 hours of paid sick leave if the worker is subject to a Federal,
4 State, or local quarantine or isolation order related to COVID-19, or the worker is advised by a
5 health care provider to self-isolate or self-quarantine due to health concerns related to COVID-
6 19, or the worker is prohibited from working by the worker's hiring entity due to health care
7 concerns related to the potential transmission of COVID-19.

8 26. In this case, Plaintiff did contract Covid during his employment. Subsequently he
9 took two weeks off of work to recover and to quarantine, yet Defendants refused to pay for this
10 time off. Defendants are a covered employer under N-51-20 and SB 95 and Plaintiff and
11 aggrieved employees are covered employees. Plaintiff and aggrieved employees were required to
12 take time off due to COVID-19 related illness or quarantine requirements yet received zero pay,
13 patently violating §1197 and 1197.1.

14 27. As a result of these practices, Defendants have violated Cal. Labor Code §§218, 510,
15 1194, 1197, 1198 and Industrial Welfare Commission Wage Orders paragraph(3)(A)(1) for
16 failure to pay overtime. Employers are liable for civil penalties pursuant to Cal. Labor Code
17 §558 and 2698 *et seq.*

18 28. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay
19 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant
20 to Labor Code § 204(a). Defendants failed to pay all wages earned to employees as a result of the
21 unlawful employment policies and practices discussed herein. As a result of these practices,
22 employees were underpaid for hours worked, including penalty wages, and this underpayment
23 resulted in a failure to pay all wages owed twice per month.

24 **Failure to Pay Minimum Wage**

25 (Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

26 29. Plaintiff reasserts and alleges all preceding paragraphs as if fully set forth and
27 incorporate said paragraphs herein by reference.
28

1 30. Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an
2 employer to suffer or permit a California employee to work without paying wages at the proper
3 minimum wage for all time worked as required by the applicable IWC Wage Order.

4 31. Defendants failed to pay Plaintiff and aggrieved employees for all hours worked as a
5 result of Defendants' practices described above, including forcing employees to engage in
6 mandatory temperature checks and washing. During this time spent waiting, employees were
7 paid zero wages. Defendants' failure to pay for all hours worked, including overtime, resulted in
8 a payment of less than the minimum wage for all hours worked, in violation of Labor Code
9 §§1197, 1197.1, 1199 and Wage Order 13 & 14 at 4(B). Defendants are liable for civil penalties
10 pursuant to Labor Code §§558 and 2699 *et seq.*

11 **Failure to Provide Safe Working Conditions**

12 (Cal. Labor Code §1198, 6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*,
13 8 CCR 3202, Wage Order 13 ¶15)

14 32. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
15 incorporate said paragraphs herein by reference.

16 33. Defendants' workers worked in a food preparation and processing warehouse, where
17 inside temperature controls kept the workplace unusually and extremely cold, beyond a
18 comfortable or safe level. Plaintiff and his coworkers worked in unbearable cold temperatures in
19 the warehouse, and complaints to supervisors went unanswered.

20 34. Wage Order 13, ¶15 requires:

21 (A) The temperature maintained in each work area shall provide reasonable comfort
22 consistent with industry-wide standards for the nature of the process and the work
23 performed.

24 35. In addition to climate control issues, Defendants failed to take safety measures
25 required to keep employees safe during COVID-19. Cal. Labor Code § 6400(a) provides that
26 every employer shall furnish employment and a place of employment that is safe and healthful
27 for the employees therein.
28

1 36. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety
2 devices and safeguards, and shall adopt and use practices, means, methods, operations, and
3 processes which are reasonably adequate to render such employment and place of employment
4 safe and healthful. Every employer.

5 37. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any
6 employee to go or be in any employment or place of employment which is not safe and healthful.

7 38. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use
8 safety devices and safeguards reasonably adequate to render the employment and place of
9 employment safe, or to adopt and use methods and processes reasonably adequate to render the
10 employment and place of employment safe, or to do every other thing reasonably necessary to
11 protect the life, safety, and health of employees.

12 39. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any
13 place of employment that is not safe and healthful.

14 40. Cal. Labor Code § 6407 provides that every employer and every employee shall
15 comply with occupational safety and health standards, with Section 25910 of the Health and
16 Safety Code, and with all rules, regulations, and orders pursuant to this division which are
17 applicable to his own actions and conduct.

18 41. Defendants failed to continue to take precautions to ensure employee safety after the
19 onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory
20 syndrome coronavirus 2 (SARS-CoV-2).

21 42. Here, Defendants, directly after the onset of COVID were required to provide PPE for
22 their employees, but those practices were not enforced or practiced with any regularity after the
23 onset of COVID and when COVID was still a health risk to employees. Plaintiff and aggrieved
24 employees were required to provide their own masks at the workplace because masks were not
25 regularly or readily available.

26 43. As a result of these practices, Defendants have violated Cal. Labor Code §§6400,
27 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for
28

1 their employees, as outlined above. Labor Code 1198 makes it unlawful to employ employee in
2 conditions prohibited by the wage order.

3 44. Labor Code §1198 makes it unlawful to employ employees in conditions prohibited
4 by the wage order. By violating the wage order, Defendants are liable for civil penalties pursuant
5 to §2698 *et seq.*

6 **Failure to Timely Pay All Wages Owed**

7 (Cal. Labor Code §§201, 202, 203, 1199 and 2698 *et seq.*)

8 45. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
9 incorporate said paragraphs herein by reference.

10 46. Defendants knowingly and willfully failed to pay all compensation due and owing to
11 Plaintiff and aggrieved employees at the time employment terminated. Because of Defendants'
12 unlawful timekeeping practices, Plaintiff and employees were underpaid and those amounts
13 remained due and owing when they separated from the company.

14 47. Defendants willfully failed to pay employees who are no longer employed by it all
15 compensation due upon termination of employment within the time periods required by Cal. Lab.
16 Code §§201 and 202. Pursuant to §203, Plaintiff and similarly situated individuals are now also
17 entitled to recover up to thirty (30) days of wages due to Defendants' "willful" failure to comply
18 with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because
19 Defendants violated §§201, 202, and 203, Defendants are liable for civil penalties pursuant to
20 Cal. Lab. Code §2698 *et seq.*

21 **Failure to Provide Accurate Itemized Wage Statements**

22 (Cal. Labor Code §§226, 226.3, 1174, 1199, 2699 *et seq.*)

23 48. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
24 incorporate said paragraphs herein by reference.

25 49. California Labor Code §226(a) provides that "[e]very employer shall, semimonthly or
26 at the time of each payment of wages, furnish each of his or her employees . . . an accurate
27 itemized statement in writing showing (1) gross wages earned, (2) total hours worked . . . , (3) the
28 number of piece-rate units earned and any applicable piece rate if the employee is paid on a

1 piece-rate basis, (4) all deductions . . . , (5) net wages earned, (6) the inclusive dates of period for
2 which the employee is paid, (7) the name of the employee and his or her social security number .
3 . . . , (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
4 rates in effect during the pay period and the corresponding number of hours worked at each
5 hourly rate by the employee.”

6 50. Labor Code §1174 provides that “[e]very employer employing labor in this state shall
7 . . . (c) [k]eep a record showing the names and addresses of all employees employed and the ages
8 of all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments at
9 which employees are employed, payroll records showing the hours worked daily by and the
10 wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
11 employees employed at the respective plants or establishments. These records shall be kept in
12 accordance with rules established for this purpose by the commission, but in any case, shall be
13 kept on file for not less than two years.”

14 51. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
15 wage statements to Plaintiff and the aggrieved employees in accordance with Labor §§226 and
16 1174. Defendants also failed to list required sick pay pursuant to Executive Order N-51-20. Such
17 failures caused injury to Plaintiff and others, by, among other things, impeding them from
18 knowing the total hours worked and the amount of wages to which they are and were entitled.
19 As a result of the unlawful employment practices discussed herein, the statements provided to
20 Plaintiff and aggrieved employees have not accurately reflected actual gross wages earned.

21 52. Plaintiff and aggrieved employees’ wage statements do not have the correct total
22 hours worked. For example, Plaintiff’s 2/8/21-2/14/21 wage statement does not correctly reflect
23 total hours worked.

24 53. Such failures caused injury to Plaintiff and others, by, among other things, impeding
25 them from knowing the total hours worked and the amount of wages to which they are and were
26 entitled. Defendants’ unlawful employment practices were knowing and intentional, and thus
27 Defendants knowingly and intentionally failed to itemize the gross wages earned, net wages
28

1 earned, penalty pay, and total hours worked. Defendants are liable for civil penalties pursuant to
2 Labor Code §2699 *et seq.*

3 54. Through this representative action, Plaintiff will advance the interests of hundreds of
4 current and former employees, such that joinder is impracticable. These current and former
5 employees can be readily identified through a review of Defendants' payroll records and the
6 records of the company that handles payroll for Defendants.

7 55. Plaintiff seeks to recover the PAGA civil penalties through a representative action
8 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
9 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

10 **FIRST CAUSE OF ACTION**

11 **Against All Defendants for Violation of the Private Attorneys General Act ("PAGA")**
12 **(California Labor Code §2698 *et seq.*)**

13 56. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
14 incorporate said paragraphs herein by reference.

15 57. Plaintiff is an "aggrieved employee" under PAGA, as he was employed by
16 Defendants during the applicable statutory period and suffered one or more of the Labor Code
17 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all
18 other current and former aggrieved employees of Defendants, the civil penalties provided by
19 PAGA, plus reasonable attorneys' fees and costs.

20 58. Plaintiff seeks to recover the PAGA civil penalties through a representative action
21 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
22 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

23 59. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
24 Code provisions:

- 25 a. Failure to Comply with California Law Concerning Payment of Lawful Wage for
26 All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§218,
27 510, 558, 1194, 1197, 1998, 1999, 2698 *et seq.*, Executive Order N-51-20 and SB
28 95);

- b. Failure to Pay Minimum Wage (Cal. Labor Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1999, 2698 *et seq.*);
- c. Failure to Provide Safe Working Conditions (Cal. Labor Code §1198, 6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202, Wage Order 13 & 14 ¶ 15);
- d. Failure to Timely Pay All Wages Owed (Cal. Labor Code §§210, 202, 203, 1199 and 2698 *et seq.*); and
- e. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code §§226, 1174, 1199, 2699 *et seq.*, Executive Order N-51-20).

60. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

61. Labor Code §558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid.

62. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

63. Plaintiff and the other current and former employees of Defendants are aggrieved employees. They were or are employed by Defendants, and each of them, and the violations alleged herein were committed against them. Plaintiff brings this action on behalf of himself and all other current and former aggrieved employees.

64. At the time of each violation, Defendants employed one or more employees.

65. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

1 66. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
2 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
3 Workforce Development Agency (“LWDA”) and served by certified mail upon Defendants,
4 Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code
5 provisions that Defendants have violated. The LWDA did not respond to Plaintiff’s Notice
6 within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies.
7 Pursuant to Labor Code §2699.3, Plaintiff may now pursue his PAGA claims in this action on
8 behalf of aggrieved employees and the State of California.

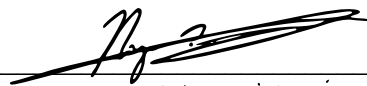
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays
11 for judgement against Defendants as follows:

- 12 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
13 determined at trial, but at least the jurisdictional amount of this Court;
- 14 2. An award of reasonable attorneys’ fees and costs pursuant to California Labor Code
15 §2699(g) and/or other applicable law;
- 16 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
17 law;
- 18 4. Pre-judgement and post-judgement interest as provided by law; and
- 19 5. Such other and further relief that the Court may deem just and proper.

20 DATED: September 3, 2021

21 **KOUL LAW FIRM**
22 **LAW OFFICES OF SAHAG MAJARIAN II**

23 

24 BY: Nazo Koulloukian, Esq.
25 Attorneys for Plaintiff SALVADOR RAMOS
26 LOPEZ, and all aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

July 1, 2021

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Torres Farm Labor Contractor, Inc.
4017 Stockdale Hwy
Bakersfield, CA 93309

Re: AMENDED PAGA Notice Pursuant to California Labor Code §2699
Claimant: Salvador Ramos Lopez
Employers: Torres Farm Labor Contractor, Inc.

Dear Sir or Madam:

Claimant Salvador Ramos Lopez has retained Nazo Koulloukian, Esq. and the KOUL LAW FIRM and Sahag Majarian of LAW OFFICES OF SAHAG MAJARIAN II, for wage and hour claims against his former employer Torres Farm Labor Contractor, Inc. (“Torres Farm” or “Employer”). Mr. Lopez began working for Torres Farm in December of 2020 and continued until February of 2021. Claimant and aggrieved employees worked as farmworkers and laborers for Torres Farm.

Torres Farm is a California Corporation who has violated, and/or has caused to be violated, several Labor Code provisions and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay Wages, including Overtime Wages

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*,

Wage Orders 13 & 14)

Section 2(G) of Wage Order 14 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and his coworkers earning wages at or near minimum wage do not receive payment for all hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including auto-deducting meal break practices, and failing to pay for required work duties performed off the clock.

Unpaid Pre-Shift Work

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. Employees meals were not recorded and from time to time did not meet the 30-minute required time period, yet 30-minute meal breaks were automatically deducted for every shift and from every paycheck. In addition, Claimant and aggrieved employees were required to engage in hand-washing and temperature checks which occurred off the clock, every day.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, first and second meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employees did not clock in and out for meal periods, and 30 minutes was automatically deducted from their timecard regardless of whether and when they took a meal period.

When employees earning minimum wage do not receive payment for all hours worked, including off-the-clock and overtime hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked, in violation of Labor Code §1197.

Failure to Include Shift Differential in Regular Rate of Pay for Calculating Overtime

Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”

Employer fails to include shift differential pay into the regular rate of pay for purposes of calculating overtime.

The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. Labor Code §510. Shift differentials, or additional pay for working less preferred shifts, must be added into the total compensation for the week, increasing the employee’s regular rate of pay. Overtime paid to Claimant on his wage statements evidence that shift differentials are excluded.

Employer has failed to properly calculate and pay overtime compensation, making no adjustment to overtime rates reflected in any of Claimant or aggrieved employees’ paystubs. Claimant and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order.

Failure to Pay COVID-19 Supplemental Paid Sick Leave

Pursuant to Labor Code §1197, “[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” In addition, SB 95 is legislation which ensures access to up to 80 hours of COVID-19 supplemental paid sick leave for eligible employees, including those advised to quarantine or isolate and those caring for COVID-impacted family members. In the case of COVID-19, Executive Order N-51-20 as well as SB 95, require that Employers provide 80 hours of paid sick leave to full time employees. Under the Executive Order food sector workers (this includes those who work in food packing facilities like Employer’s) who work full time are entitled to 80 hours of paid sick leave if the worker is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or the worker is advised by a health care provider to self-isolate or self-quarantine due to health concerns related to COVID-19, or the worker is prohibited from working by the worker’s hiring entity due to health care concerns related to the potential transmission of COVID-19.

In this case, Claimant did contract Covid during his employment. Subsequently he took two weeks off of work to recover and to quarantine, yet Employer refused to pay for this time off. Employer is a covered employer under N-51-20 and SB 95 and Claimant and aggrieved employees are covered employees. Claimant and aggrieved employees were required to take time off due to COVID-19 related illness or quarantine requirements yet received zero pay, patently violating §1197 and 1197.1.

As a result of these practices, Employers have violated Cal. Labor Code §§218, 510, 1194, 1197, 1198 and Industrial Welfare Commission Wage Orders paragraph(3)(A)(1) for failure to pay overtime. Employers are liable for civil penalties pursuant to Cal. Labor Code §558and 2698 *et seq.*

Failure to Provide Safe Working Conditions
(Cal. Labor Code §§1198, 6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202, Wage Order 13 ¶15.)

Employer's workplaces would get unsafely cold due to the conditions for packing food items. Employer does not have proper climate control. Claimant and his coworkers worked in extreme cold throughout the facility, break areas and rest rooms.

Wage Order 13 ¶15 requires:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

In addition to climate control issues, Employer failed to take safety measures required to keep employees safe during COVID-19. Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Employer failed to continue to take precautions to ensure Employee safety after the onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

The Employers, directly after the onset of COVID were required to provide PPE for their employees, but those practices were not enforced or practiced with any regularity after the onset of COVID and when COVID was still a health risk to the Employees. Claimant and aggrieved employees were required to provide their own masks at the workplace because masks were not regularly or readily available. As a result of these practices, Employers have violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlined above. Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203 and 2698 *et seq.* Wage Orders 13 & 14)

Failure to Pay Wages Due Upon Termination

Labor Code section 201 states, in pertinent part, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states, in pertinent part, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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.” Labor Code section 203 provides that an employee’s wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Labor Code section 256, in pertinent part, provides that a civil penalty shall be imposed in an amount not exceeding 30 days pay as waiting time under the terms of Section 203. Employer willfully failed to pay Claimant and aggrieved employees all wages due and owing upon separation of employment including, but not limited all earned regular and overtime wages. By furnishing Claimant and other separated aggrieved employees with a final check that failed to include all earned and owed wages, Employer violated Labor Code sections 201 and/or 202.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices

discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Paystub and Record Keeping Violations

(Cal. Lab. Code §§226, 1174, 2698 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimants and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174.

Based on and as a result of the above-mentioned Labor Code violations, Employers maintained and issued inaccurate wage statements, failing to include required hours and overtime hours worked and misrepresenting actual regular hours worked on the final wage statement. Employer further failed to include meal and rest period penalties, thus failing the requirements of Labor Code §226(a). Employer also failed to list required sick pay pursuant to Executive Order N-51-20. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

Additionally, Claimant and aggrieved employees' wage statements do not show the correct total hours worked. For example, Claimant's 2/8/21-2/14/21 wage statement does not correctly reflect total hours worked.

Claimant will seek penalties as permitted under Labor Code §226 for himself and other aggrieved employees for each violation. Further, claimant will seek recovery of civil penalties under Labor Code §226.3, and PAGA, Labor Code §2698, *et seq.*, on behalf of the LWDA against the Employers if authorized to file a representative action on behalf of the State of California for Employers' paystub violations.

Conclusion

Employers have violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court.

Respectfully Submitted,



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