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County of Monterey
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF MONTEREY

11
12 OSVALDO FIGUEROA, individually, and
13 on behalf of other members of the general
public similarly situated,

14
15 Plaintiff,

16 vs.

17 R.C. PACKING, LLC, a California limited
18 liability company; R.C. FARMS, LLC, a
California limited liability company; and
19 DOES 1 through 10, inclusive,

20 Defendants.
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Case No.: 21CV001593

**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 § 226.2 (Failure to Compensate for Rest and Recovery Periods and/or Other Nonproductive Time)
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (4) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (5) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (6) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (8) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During

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- Employment);
- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Osvaldo Figueroa, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

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

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise intentionally
20 avail themselves of the California market so as to render the exercise of jurisdiction over them
21 by the California courts consistent with traditional notions of fair play and substantial justice.
22 There is no basis for federal diversity jurisdiction in this action because there is no complete
23 diversity, and this case falls within the statutory exceptions to “minimal diversity” jurisdiction
24 under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information and belief, two-
25 thirds or more of the class members and Defendants are citizens of California and/or (a) two-
26 thirds of the class members and Defendants are citizens of California; (b) the alleged wage and
27 hour violations occurred in California; (c) significant relief is being sought against Defendants
28 whose violations of California wage and hour laws 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 R.C. PACKING, LLC and R.C. FARMS, LLC filed Statement of Information forms with the California Secretary of State designating principal places of business in Gonzales and Salinas, California, County of Monterey, respectively, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

THE PARTIES

4. Plaintiff Osvaldo Figueroa is a resident of Greenfield, in Monterey County, California. Defendants employed Plaintiff as a non-exempt employee from approximately July 2020 to September 2020. Plaintiff worked for Defendants as a Broccoli Picker and Harvester at their location in Greenfield, California. During his employment, Plaintiff typically worked eight (8) hours or more per day and five (5) days per week. Plaintiff was typically compensated a piece-rate for productive time that varied based on the type of crop harvested, and was sometimes paid an hourly rate for harvesting crops and for other nonproductive time. Plaintiff's primary job duties included, without limitation, cutting and picking broccoli vegetables, driving tractors, and cleaning his work area.

5. R.C. PACKING, 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. R.C. FARMS, 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.

7. 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

1 become known.

2 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
3 were the partners, agents, owners, or managers of R.C. PACKING, LLC and R.C. FARMS,
4 LLC at all relevant times.

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

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

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

20 12. Under California law, Defendants are jointly and severally liable as employers
21 for the violations alleged herein because they have each exercised sufficient control over the
22 wages, hours, working conditions, and employment status of Plaintiff and class members. Each
23 Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled
24 their work schedule and/or conditions of employment, determined their rate of pay, and
25 maintained their employment records. Defendants suffered or permitted Plaintiff and class
26 members to work and/or “engaged” Plaintiff and class members so as to create a common-law
27 employment relationship. As joint employers of Plaintiff and class members, Defendants are
28 jointly and severally liable for the civil penalties and all other relief available to Plaintiff and

1 class members under the law.

2 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
3 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
4 members because Defendants have:

- 5 (a) jointly exercised meaningful control over the work performed by Plaintiff
6 and class members;
- 7 (b) jointly exercised meaningful control over Plaintiff's and class members'
8 wages, hours, and working conditions, including the quantity, quality
9 standards, speed, scheduling, and operative details of the tasks performed
10 by Plaintiff and class members;
- 11 (c) jointly required that Plaintiff and class members perform work which is
12 an integral part of Defendants' businesses; and
- 13 (d) jointly exercised control over Plaintiff and class members as a matter of
14 economic reality in that Plaintiff and class members were dependent on
15 Defendants, who shared the power to set the wages of Plaintiff and class
16 members and determined their working conditions, and who jointly
17 reaped the benefits from the underpayment of their wages and
18 noncompliance with other statutory provisions governing their
19 employment.

20 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
21 there has existed a unity of interest and ownership between Defendants such that any
22 individuality and separateness between the entities has ceased.

23 15. R.C. PACKING, LLC; R.C. FARMS, LLC.; and/or DOES 1 through 10 are
24 therefore alter egos of each other.

25 16. Adherence to the fiction of the separate existence of Defendants would permit an
26 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
27 liability for the wrongful acts committed by them under the name R.C.

28 17. Plaintiff further alleges, upon information and belief, that Defendants R.C.

PACKING, LLC and R.C. FARMS, LLC are alter egos of each other for the following reasons:

- (a) According to their Statement of Information forms filed with the California Secretary of State, R.C. PACKING, LLC and R.C. FARMS, LLC share the same managers and/or members, including, but not limited to, Janice Caprara and Brian Caprara;
- (b) On the California Secretary of State's website (<https://businesssearch.sos.ca.gov/>), R.C. PACKING, LLC and R.C. FARMS, LLC share the same Agent for Service of Process, Janice Caprara; and
- (c) On information and belief, R.C. PACKING, LLC and R.C. FARMS, LLC utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

18. Defendants are a family-owned premium grower, harvester, and shipper of high-quality fresh fruits and vegetables. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their company headquarters in Gonzales or Salinas, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

19. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee's time of hire.

20. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Gonzales or Salinas, California which processes

1 payroll for all non-exempt employees working for Defendants at their various locations and
2 jobsites in California, including Plaintiff and class members. Based upon information and
3 belief, Defendants issue the same formatted wage statements to all non-exempt employees in
4 California, irrespective of their work locations. Upon information and belief, Defendants
5 process payroll for departing employees in the same manner throughout the State of California,
6 regardless of the manner in which each employee's employment ends.

7 21. Defendants continue to employ non-exempt employees in California.

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

12 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
13 members were not paid for all hours worked because all hours worked were not recorded.

14 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that they were obligated to separately compensate Plaintiff and class
16 members for rest and recovery periods and/or other nonproductive time when paying them on a
17 piece-rate basis at their regular rate of pay. In violation of the California Labor Code,
18 Defendants failed to separately compensate Plaintiff and class members for rest and recovery
19 periods and/or other nonproductive time.

20 25. 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 at least minimum
22 wages for compensation and that they were not receiving at least minimum wages for work that
23 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
24 class members were not paid at least minimum wages for work done off-the-clock.

25 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to receive certain wages for
27 overtime compensation and that they were not receiving certain wages for overtime
28 compensation.

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

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

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

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

25 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to timely payment of all
27 wages earned upon termination of employment. In violation of the California Labor Code,
28 Plaintiff and class members did not receive payment of all wages due, including, but not limited

1 to, compensation for rest and recovery periods and/or other nonproductive time, minimum
2 wages, overtime wages, and/or meal and rest period premiums, within permissible time periods.

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

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

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

20 **PAGA REPRESENTATIVE ALLEGATIONS**

21 35. At all times herein set forth, PAGA provides that any provision of law under the
22 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
23 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
24 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
25 behalf of themselves and other current or former employees pursuant to procedures outlined in
26 California Labor Code section 2699.3.

27 36. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
28 person who was employed by the alleged violator and against whom one or more of the alleged

violations was committed.”

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

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.
- (b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of the postmark date of the aggrieved employee’s notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee’s notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been

1 violated (other than those listed in Section 2699.5), including the facts
2 and theories to support the alleged violation.

3 (b) An aggrieved employee's notice filed with the LWDA pursuant to
4 2699.3(c) and any employer response to that notice shall be accompanied
5 by a filing fee of seventy-five dollars (\$75).

6 (c) The employer may cure the alleged violation within thirty-three (33)
7 calendar days of the postmark date of the notice sent by the aggrieved
8 employee or representative. The employer shall give written notice
9 within that period of time by certified mail to the aggrieved employee or
10 representative and by online filing with the LWDA if the alleged
11 violation is cured, including a description of actions taken, and no civil
12 action pursuant to Section 2699 may commence. If the alleged violation
13 is not cured within the 33-day period, the aggrieved employee may
14 commence a civil action pursuant to Section 2699.

15 40. On May 24, 2021, Plaintiff provided written notice by online filing to the LWDA
16 and by Certified Mail to Defendants of the specific provisions of the California Labor Code
17 alleged to have been violated, including facts and theories to support the alleged violations, in
18 accordance with California Labor Code section 2699.3. Plaintiff's written notice was
19 accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA
20 Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case
21 Number LWDA-CM-833030-21. A true and correct copy of Plaintiff's written notice to the
22 LWDA and Defendants is attached hereto as "Exhibit 1."

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

26 42. Thus, Plaintiff has satisfied the administrative prerequisites under California
27 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
28 violations of California Labor Code sections 182.12, 201, 202, 203, 204, 221, 223, 224, 226(a),

226.2, 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

43. 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 “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

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

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

46. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, 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 Defendants for violations of California Labor Code sections 182.12, 201, 202, 203, 204, 221, 223, 224, 226(a), 226.2, 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

47. 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.

48. All claims alleged herein arise under California law for which Plaintiff seeks

1 relief authorized by California law.

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

3 All persons who worked for Defendants as non-exempt employees
4 paid on an hourly and/or piece-rate basis in California within four
5 years prior to the filing of the initial complaint until the date of trial
6 ("Class").

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

8 All persons who worked for Defendants as non-exempt employees
9 paid on an hourly and/or piece-rate basis in California, and who
10 received at least one wage statement within one (1) year prior to the
11 filing of the initial complaint until the date of trial ("Subclass").

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

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

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

- 18 (a) Whether Defendants failed to separately compensate Plaintiff and class
19 members for rest and recovery periods and/or other nonproductive time
20 when paying them on a piece-rate basis;
- 21 (b) Whether Defendants failed to pay Plaintiff and class members at least
22 minimum wages for all hours worked;
- 23 (c) Whether Defendants required Plaintiff and class members to work over
24 the applicable maximum hours per day or maximum hours per week, and
25 failed to pay all legally required overtime compensation to Plaintiff and
26 class members;
- 27 (d) Whether Defendants failed to provide Plaintiff and class members with
28 meal periods;
- (e) Whether Defendants failed to authorize and permit Plaintiff and class
members to take rest periods;

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

22 54. There is a well-defined community of interest in the litigation and the class
23 members are readily ascertainable:

- 24 (a) Numerosity: The class members are so numerous that joinder of all
25 members would be unfeasible and impractical. The membership of the
26 entire class is unknown to Plaintiff at this time; however, the class is
27 estimated to be greater than one hundred (100) individuals and the
28 identity of such membership is readily ascertainable by inspection of

Defendants' employment records.

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

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

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

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide

1 the class members who are not named in the complaint with a type of
2 anonymity that allows for the vindication of their rights while
3 simultaneously protecting their privacy.

4 //

5 **FIRST CAUSE OF ACTION**

6 **Violation of California Labor Code § 226.2—Failure to Compensate for Rest and** 7 **Recovery Periods and/or Other Nonproductive Time**

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

10 56. At all relevant times herein, California Labor Code section 226.2 requires
11 employers that utilize a piece-rate compensation plan to separately compensate employees for
12 rest and recovery periods and other nonproductive time at or above specified minimum hourly
13 rates. Labor Code section 226.2 further requires that employers provide employees
14 compensated on a piece-rate basis with itemized statements stating the total hours of
15 compensable rest and recovery periods, the rate of compensation, and the gross wages paid for
16 those periods during the pay period, and the total hours of other nonproductive time, as
17 specified, the rate of compensation, and the gross wages paid for that time during the pay
18 period.

19 57. During the relevant time period, Defendants adopted a company-wide
20 compensation plan whereby they paid Plaintiff and class members on a piece-rate basis for the
21 performance of certain activities and assignments. For example, Defendants paid Plaintiff a flat
22 rate for each container of broccoli vegetable harvested, depending on what part of the broccoli
23 vegetable was picked, including, but not limited to, broccoli crowns, broccoli florets, broccoli
24 spears, or broccoli stems. Other class members were similarly paid on a piece-rate basis for
25 harvesting crops. However, Defendants failed to separately compensate Plaintiff and class
26 members for all nonproductive time, including but not limited to, such non-harvesting activities
27 as assembling boxes, preparing trailers, and moving tractor vehicles.

28 58. For example, approximately two (2) to three (3) times per week, Defendants

1 required Plaintiff and class members to report to work 30 minutes prior to their scheduled shifts
2 to prepare for the day's harvesting, such as assembling boxes for packed broccoli and preparing
3 trailers. As a further example, twice per week, Plaintiff was required to spend up to 30 minutes
4 after he completed his harvesting tasks driving tractors to their designated locations.
5 Defendants did not record or track the time Plaintiff and class members spent assembling boxes,
6 preparing trailers, and moving tractor vehicles, and did not compensate Plaintiff and class
7 members for all of this nonproductive time.

8 59. Defendants also failed to provide Plaintiff and class members with itemized
9 statements listing the total hours of all nonproductive time and other required details regarding
10 payment for nonproductive time. Defendants further did not provide Plaintiff and class
11 members with itemized statements showing the rates at which they were paid for all
12 nonproductive time. Defendants' failure to provide them with the requisite itemized statements
13 violates Labor Code section 226.2.

14 60. Defendants' failure to separately compensate Plaintiff and class members for rest
15 and recovery periods and/or other nonproductive time at or above specified minimum hourly
16 rates, as well as Defendants' failure to provide Plaintiff and class members with the requisite
17 itemized statements, violates Labor Code section 226.2. Plaintiff and class members are
18 therefore entitled to recover from Defendants unpaid compensation for rest and recovery periods
19 and/or other nonproductive time, pursuant to California Labor Code section 226.2.

20 **SECOND CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 22 **Minimum Wages** 23 **(Against all Defendants)**

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

26 62. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
27 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
28 minimum wage to be paid to employees, and the payment of a wage less than the minimum so

1 fixed is unlawful. Compensable work time is defined in IWC Wage Order 14-2001 as “the time
2 during which an employee is subject to the control of an employer, and includes all the time the
3 employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs.
4 tit. 8, § 11140(2)(G) (defining “Hours Worked”).

5 63. During the relevant time period, Defendants paid Plaintiff and class members on
6 an hourly basis as an alternative to a piece-rate basis. However, Defendants did not record
7 actual hours worked by Plaintiff and class members and/or did not pay them for all hours that
8 they were suffered or permitted to work. On information and belief, Defendants did not provide
9 employees with any mechanism, such as a handwritten timesheet, time clock, or electronic
10 timekeeping system, to track and record their hours worked. Instead, Defendants had their
11 supervisors input all employee time on handwritten timesheets, and thus maintained exclusive
12 control and discretion over employee punch-in and punch-out times. Moreover, on these
13 timesheets, Defendants’ supervisors only entered Plaintiff’s and class members’ shift start-
14 times, shift end-times, meal period start- and end-times, and rest period start- and end-times
15 with the hours they were scheduled, instead of their actual hours worked. Thus, when
16 Defendants’ supervisors required Plaintiff and class members to start working before their
17 scheduled shifts and/or after their scheduled shifts as described above, Defendants did not
18 compensate Plaintiff and class members for this time worked before and/or after their scheduled
19 shifts.

20 64. Second, Defendants had a company-wide policy and/or practice of rounding
21 employee punch-in and punch-out times to the nearest quarter hour. Upon information and
22 belief, Defendants’ rounding policy is, and continues to be, unfair and has, over time, resulted in
23 the underpayment of wages to Plaintiff and class members.

24 65. Third, Defendants have, on a company-wide basis, failed to adhere to a schedule
25 of meal periods. This practice, coupled with the heavy workload and pressure from Defendants
26 to complete assigned tasks, impeded Plaintiff and class members from taking timely, compliant
27 meal periods. Specifically, Defendants had a daily crew production goal of having Plaintiff and
28 class members fill eight (8) trailers, containing eight (8) pallets of packed broccoli vegetables.

Moreover, Plaintiff and class members were required to discuss work-related matters with supervisors and management during unpaid meal periods. For example, Plaintiff's and class members' meal periods were interrupted once per week by Defendants' supervisors to discuss work-related issues, such as proper cutting or harvesting techniques, which could take up to 10-15 minutes. As a result, Plaintiff and class members were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. Defendants did not pay Plaintiff and class members for the time they continued to perform tasks during meal periods.

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

67. Thus, 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.

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

THIRD CAUSE OF ACTION

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

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

70. California Labor Code section 510 codifies the right to overtime compensation at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week 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.

71. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

72. California Labor Code section 1198 and the applicable 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.

73. Specifically, IWC Wage Order 14-2001 provides that employers were required to pay employees working more than ten (10) hours in a day or more than sixty (60) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of ten (10) hours in a day or more than sixty (60) hours in a workweek. Starting January 1, 2019, employers were required to pay employees working more than nine and one-half (9 ½) hours in a day or more than fifty-five (55) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of nine and one-half (9 ½) hours in a day or more than fifty-five (55) hours in a workweek. Starting January 1, 2020, employers 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

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

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

14 75. As set forth above, as a result of Defendants' company-wide policy and/or
15 practice of not permitting employees to record all their hours worked, Defendants failed to
16 record all hours worked outside of scheduled shifts or during meal periods. Also, as stated
17 above, Defendants maintained a policy and/or practice requiring Plaintiff and class members to
18 perform work off-the-clock prior to start of their shifts and after the end of their shifts. In
19 addition, Defendants' practices of rounding employee punch-in and punch-out times to the
20 nearest quarter hour is, and continues to be, unfair and has, over time, resulted in the
21 underpayment of wages to Plaintiff and class members. To the extent Defendants' rounding
22 policy took away time worked that was eligible for overtime, Plaintiff and class members were
23 denied overtime pay for all hours worked. Furthermore, due to Defendants' policies and/or
24 practices of failing to schedule meal periods and assigning heavy workloads, Plaintiff and class
25 members were forced to forego meal periods, have their meal periods interrupted, and/or were
26 otherwise not relieved of all duties during meal periods.

27 76. Defendants knew or should have known that as a result of these company-wide
28 practices and/or policies, Plaintiff and class members were performing their assigned duties off-

1 the-clock before and after their shifts and during meal periods, and were suffered or permitted to
2 perform work for which they were not paid. Because Plaintiff and class members sometimes
3 worked shifts of the applicable maximum hours in a day and/or the applicable maximum hours
4 in a week, some of this off-the-clock work qualified for overtime premium pay. Therefore,
5 Plaintiff and class members were not paid overtime wages for all of the overtime hours they
6 actually worked.

7 77. Defendants' failure to pay Plaintiff and class members the balance of overtime
8 compensation as required by California law, violates the provisions of California Labor Code
9 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
10 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
11 and attorneys' fees.

12 **FOURTH CAUSE OF ACTION**

13 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period** 14 **Violations** 15 **(Against all Defendants)**

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

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

25 80. At all relevant times herein set forth, California Labor Code sections 226.7,
26 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
27 meal period mandated by an applicable order of the IWC.

28 81. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and

1 the applicable IWC Wage Order also require employers to provide a second meal period of not
2 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
3 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
4 hours worked is no more than twelve (12) hours, the second meal period may be waived by
5 mutual consent of the employer and the employee only if the first meal period was not waived.

6 82. As described above, Defendants did not have a mechanism in place for
7 employees to track and record the start and stop times of their meal periods. Instead,
8 Defendants gave their supervisors exclusive control and discretion over employee punch-in and
9 punch-out times, including meal period start and stop times. Because Plaintiff and class
10 members did not have access to the timekeeping system, they were unable to record when their
11 meal periods were missed, late, interrupted, or cut short. Alternatively, Defendants
12 implemented a company-wide policy and practice of automatically deducting meal periods from
13 Plaintiff's and class members' time records regardless of whether they had actually received a
14 compliant meal period.

15 83. Additionally, Defendants had, and continue to have, company-wide policies
16 and/or practices of understaffing their locations while assigning heavy workloads and failing to
17 adhere to scheduled meal periods, which resulted in a lack of meal period coverage and
18 prevented Plaintiff and class members from taking all timely, uninterrupted meal periods to
19 which they were entitled. Consequently, Plaintiff and class members would be forced to work
20 in excess of five (5) hours before taking a meal period, had their meal periods interrupted,
21 and/or had to forgo their meal periods altogether. For example, twice per week, Plaintiff was
22 only provided with his meal period after working in excess of five (5) hours due to his heavy
23 workload. As a further example, as stated above, Plaintiff and class members also had their
24 meal periods interrupted by supervisors once per week to discuss work-related issues.

25 84. Furthermore, during the relevant time period, Defendants maintained and
26 implemented a company-wide on-premises meal period policy, which mandated that Plaintiff
27 and class members remain on the work premises during their meal periods. Because Plaintiff
28 and class members were restricted from leaving the premises during meal periods, Plaintiff and

1 class members were denied the ability to use meal periods freely for their own purposes, such as
2 relaxing in their cars, picking up food, or running personal errands. Thus, Defendants
3 effectively maintained control over Plaintiff and class members during meal periods. Plaintiff
4 and class members did not sign valid meal period waivers on days that they were entitled to
5 meal periods and were not relieved of all duties.

6 85. At all times herein mentioned, Defendants knew or should have known that, as a
7 result of their company-wide policies and/or practices, Plaintiff and class members were not
8 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
9 knew or should have known that they did not pay Plaintiff and class members meal period
10 premiums when meal periods were missed, late, short, and/or interrupted. As stated above,
11 Defendants' supervisors entered Plaintiff's and class members' meal period start- and end-times
12 on their timesheets with the hours they were scheduled, regardless of if or when meal periods
13 were actually taken.

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

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

24 **FIFTH CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 26 **(Against all Defendants)**

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

1 89. At all relevant times herein set forth, the applicable IWC Wage Order and
2 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
3 members' employment by Defendants.

4 90. At all relevant times, the applicable IWC Wage Order provides that "[e]very
5 employer shall authorize and permit all employees to take rest periods, which insofar as
6 practicable shall be in the middle of each work period" and that the "rest period time shall be
7 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
8 hours or major fraction thereof" unless the total daily work time is less than three and one-half
9 (3 ½) hours.

10 91. At all relevant times, California Labor Code section 226.7 provides that no
11 employer shall require an employee to work during any rest period mandated by an applicable
12 order of the California IWC. To comply with its obligation to authorize and permit rest periods
13 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
14 must "relinquish any control over how employees spend their break time, and relieve their
15 employees of all duties—including the obligation that an employee remain on call. A rest
16 period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
17 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code
18 section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1)
19 additional hour of pay at their regular rates of pay for each work day that a required rest period
20 was not authorized and permitted.

21 92. During the relevant time period, Defendants regularly failed to authorize and
22 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
23 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
24 practices, including understaffing and assigning of heavy workloads, prevented Plaintiff and
25 class members from being relieved of all duty to take their rest periods. Additionally,
26 Defendants failed to adhere to a schedule of rest periods, which, coupled with Defendants'
27 failure to provide adequate rest period coverage, further led to Plaintiff and class members not
28 being authorized and permitted to take compliant rest periods.

93. Furthermore, during the relevant time period, Defendants maintained and implemented a company-wide on-premises rest period policy, which mandated that Plaintiff and class members remain on the work premises during their rest periods. Because Plaintiff and class members 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 or relaxing in their cars. Thus, Defendants effectively maintained control over Plaintiff and class members during rest periods.

94. As a result of Defendants' practices and policies, Plaintiff and class members 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, Plaintiff missed his rest periods five (5) times per week in order to complete the work-related duties Defendants assigned to him.

95. Defendants have also engaged in a company-wide policy and/or practice of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. As stated above, Defendants' supervisors entered Plaintiff's and class members' rest period start and end-times on their timesheets with the hours for which they were scheduled, regardless of if or when rest periods were actually taken. As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them rest period premiums due, in violation of Labor Code section 226.7, 516, and the applicable IWC Wage Order.

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

SIXTH CAUSE OF ACTION

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

97. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

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

7 99. During the relevant time period, Defendants have knowingly and intentionally
8 provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage
9 statements. For example, Defendants issued uniform wage statements to Plaintiff and Subclass
10 members that fail to correctly list: gross wages earned; total hours worked; net wages earned;
11 and all applicable hourly rates in effect during the pay period, including overtime rates of pay,
12 and the corresponding number of hours worked at each hourly rate. Specifically, Defendants
13 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

14 100. Because Defendants did not record the time Plaintiff and Subclass members
15 spent working off-the-clock, improperly rounded their total hours worked, deducted time from
16 their records for meal periods that were interrupted and/or missed (and therefore time for which
17 they should have been paid), and failed to provide itemized statements listing the total hours of
18 all nonproductive time and other required details regarding payment for nonproductive time,
19 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and
20 Subclass members in compliance with section 226(a)(1) and 226(a)(5). For the same reason,
21 Defendants failed to accurately list the total number of hours worked by Plaintiff and Subclass
22 members in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in
23 effect during the pay period and corresponding accurate number of work hours worked at each
24 hourly rate in violation of section 226(a)(9).

25 101. The wage statement deficiencies also include, without limitation, failing to list
26 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
27 piece-rate basis; failing to list all deductions; failing to list the name of the employee and only
28 the last four digits of his or her social security number or an employee identification number

1 other than a social security number; failing to list the name and address of the legal entity that is
2 the employer; failing to list the inclusive dates of the period for which employees were paid;
3 and/or failing to state all hours worked as a result of not recording or stating hours worked off-
4 the-clock.

5 102. California Labor Code section 1198 provides that the maximum hours of work
6 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
7 forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
8 employment of any employees for longer hours than those fixed by the order or under
9 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage
10 Order, employers are required to keep accurate time records showing when the employee begins
11 and ends each work period and meal period. During the relevant time period, due to their
12 aforementioned timekeeping practices and/or policies, Defendants failed, on a company-wide
13 basis, to keep accurate records of work period and meal period start and stop times for Plaintiff
14 and Subclass members, in violation of section 1198.

15 103. California Labor Code section 1174(d) provides that “[e]very person employing
16 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
17 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
18 plants or establishments at which employees are employed, payroll records showing the hours
19 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
20 applicable piece rate paid to, employees employed at the respective plants or
21 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
22 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
23 members showing the daily hours they worked and the wages paid thereto as a result of failing
24 to record the off-the-clock hours that they worked and improperly rounding their total hours
25 worked.

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

1 employee.

2 **SEVENTH CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon**

4 **Termination**

5 **(Against all Defendants)**

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

8 106. This cause of action is dependent upon, and wholly derivative of, the
9 compensation for rest and recovery periods and/or other nonproductive time, minimum wages,
10 overtime wages, and/or meal and rest period premiums that were not timely paid to Plaintiff and
11 class members during their employment.

12 107. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
13 that if an employer discharges an employee, the wages earned and unpaid at the time of
14 discharge are due and payable immediately, and that if an employee voluntarily leaves his or her
15 employment, his or her wages shall become due and payable not later than seventy-two (72)
16 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or
17 her intention to quit, in which case the employee is entitled to his or her wages at the time of
18 quitting.

19 108. Defendants willfully failed to pay Plaintiff and class members who are no longer
20 employed by Defendants the earned and unpaid wages set forth above, including but not limited
21 to, compensation for rest and recovery periods and/or other nonproductive time, minimum
22 wages, overtime wages, and/or meal and rest period premiums either at the time of discharge, or
23 within seventy-two (72) hours of their leaving Defendants' employ.

24 109. Defendants' failure to pay Plaintiff and class members who are no longer
25 employed by Defendants their wages earned and unpaid at the time of discharge, or within
26 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
27 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
28 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a

thirty (30) day maximum pursuant to California Labor Code section 203.

EIGHTH CAUSE OF ACTION

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

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

111. This cause of action is dependent upon, and wholly derivative of, the compensation for rest and recovery periods and/or other nonproductive time, minimum wages, overtime wages, and/or meal and rest period premiums that were not timely paid to Plaintiff and class members during their employment.

112. 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.

113. 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.

114. 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.

115. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, compensation for rest and recovery

1 periods and/or other nonproductive time, minimum wages, overtime wages, and/or meal and rest
2 period premiums, either at the time of discharge, or within seventy-two (72) hours of their
3 leaving Defendants' employ.

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

7 **NINTH CAUSE OF ACTION**

8 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 9 **(Against all Defendants)**

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

12 118. At all times herein set forth, California Labor Code section 2802 provides that an
13 employer must reimburse employees for all necessary expenditures and losses incurred by the
14 employee in the performance of his or her job. The purpose of Labor Code section 2802 is to
15 prevent employers from passing off their cost of doing business and operating expenses on to
16 their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
17 (2014). The applicable wage order, IWC Wage Order 14-2001, provides that: "[w]hen tools or
18 equipment are required by the employer or are necessary to the performance of a job, such tools
19 and equipment shall be provided and maintained by the employer, except that an employee
20 whose wages are at least two (2) times the minimum wage provided herein may be required to
21 provide and maintain hand tools and equipment customarily required by the trade or craft."

22 119. Defendants, on a company-wide basis, required Plaintiff and class members to
23 purchase basic tools that were necessary for the completion of assigned tasks. For example,
24 Plaintiff spent \$20.00 on a pruning knife that was needed to harvest broccoli vegetables.
25 Defendants failed to provide these basic tools to Plaintiff and class members, forcing them to
26 procure their own, and failed to reimburse Plaintiff and class members for the costs of these
27 tools.

28 120. Defendants could have provided Plaintiff and class members with the actual tools

1 for use on the job, such as basic tools and supplies, or, Defendants could have reimbursed
2 employees for their expenses. Instead, Defendants passed these operating costs off onto
3 Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2) times
4 the minimum wage.

5 121. Defendants' company-wide policy and/or practice of passing on their operating
6 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
7 have intentionally and willfully failed to reimburse Plaintiff and other class members for
8 necessary business-related expenses and costs.

9 122. Plaintiff and class members are entitled to recover from Defendants their
10 business-related expenses incurred during the course and scope of their employment, plus
11 interest.

12 **TENTH CAUSE OF ACTION**

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

14 **(Against all Defendants)**

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

17 124. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
18 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
19 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 221, 223, 224,
20 226(a), 226.2, 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802.
21 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
22 penalties for violations of those Labor Code sections not found in section 2699.5, including
23 sections 516 and 1182.12.

24 125. Defendants' conduct, as alleged herein, violates numerous sections of the
25 California Labor Code, including, but not limited to, the following:

- 26 (a) Violation of Labor Code section 226.2 and the applicable IWC wage order
27 for Defendants' failure to compensate Plaintiff and other aggrieved
28 employees for rest and recover periods and/or other non-productive time, as

alleged herein;

(b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;

(c) Violation of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other aggrieved employees with all required overtime pay, as alleged herein;

(d) Violation of Labor Code sections 226.7, 512, 516, 1198, and the applicable IWC wage order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;

(e) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;

(f) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;

(g) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as alleged herein;

(h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination, as alleged herein;

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

(j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

ELEVENTH CAUSE OF ACTION

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

1 **Unlawful Business Practices**

2 **(Against all Defendants)**

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

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

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

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

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

- 19 (a) Failing to separately compensate Plaintiff and class members for rest and
20 recovery periods and/or other nonproductive time when paying them on a
21 piece-rate basis, in violation of California Labor Code section 226.2, as
22 alleged herein;
- 23 (b) Failing to pay at least minimum wage to Plaintiff and class members in
24 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
25 and 1198 and the applicable IWC Wage Order, as alleged herein;
- 26 (c) Requiring non-exempt employees, including Plaintiff and class members,
27 to work overtime without paying them proper compensation in violation
28 of California Labor Code sections 510 and 1198 and the applicable IWC

Wage Order, as alleged herein;

- (d) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (f) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;
- (g) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein; and
- (h) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein.

131. 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.

132. 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.

TWELFTH CAUSE OF ACTION

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

Unfair Business Practices
(Against all Defendants)

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

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

135. 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.

136. 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.*)

137. 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.

138. 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

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

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

Class Certification

2. That this case be certified as a class action;
3. That Plaintiff be appointed as the representative of the Class and Subclass;
4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.2 by willfully failing to separately compensate Plaintiff and class members for rest and recovery periods and/or other nonproductive time and willfully failing to provide accurate itemized wage statements thereto;

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

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

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

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As to the Second Cause of Action

9. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiff and class members;
10. For general unpaid wages and such general and special damages as may be appropriate;
11. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;
12. For reasonable attorneys’ fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);
13. For liquidated damages pursuant to California Labor Code section 1194.2; and
14. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

15. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Order by willfully failing to pay all overtime wages due to Plaintiff and class members;
16. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
17. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;
18. For reasonable attorneys’ fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and
19. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

20. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order by willfully

1 failing to provide all meal periods to Plaintiff and class members;

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

5 22. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 23. For premiums pursuant to California Labor Code section 226.7(c);

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

10 25. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 26. For such other and further relief as the Court may deem equitable and
13 appropriate.

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

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

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

21 29. For all actual, consequential, and incidental losses and damages, according to
22 proof;

23 30. For premiums pursuant to California Labor Code section 226.7(c);

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

26 32. For attorneys' fees pursuant to California Code of Civil Procedure section
27 1021.5, or as otherwise provided by law; and

28 33. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Sixth Cause of Action

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

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

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

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

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

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

As to the Seventh Cause of Action

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

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

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

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

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

1 45. For such other and further relief as the Court may deem equitable and
2 appropriate.

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

4 46. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
6 compensation for rest and recovery periods and/or other nonproductive time, minimum wages,
7 overtime wages, and/or meal and rest period premiums during their employment;

8 47. For all actual, consequential and incidental losses and damages, according to
9 proof;

10 48. For statutory penalties according to proof pursuant to California Labor Code
11 section 210;

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

14 50. For attorneys' fees pursuant to California Code of Civil Procedure section
15 1021.5, or as otherwise provided by law; and

16 51. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Ninth Cause of Action**

19 52. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related
21 expenses and costs incurred by Plaintiff and class members;

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

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

26 55. For all actual, consequential, and incidental losses and damages, according to
27 proof;

28 56. For attorneys' fees and costs pursuant to California Labor Code section 2802(c),

1 or as otherwise provided by law; and

2 57. For such other and further relief as the Court may deem equitable and
3 appropriate.

4 **As to the Tenth Cause of Action**

5 58. That the Court declare, adjudge and decree that Defendants violated the
6 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
7 226.2 (by failing to compensate for rest and recovery periods and/or other non-productive time);
8 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
9 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
10 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
11 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
12 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
13 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
14 employment); and 2802 (by failing to reimburse business expenses);

15 59. For civil penalties pursuant to California Labor Code sections 210, 226.2, 226.3,
16 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
17 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
18 1197.1, 1198, and 2802;

19 60. For attorneys' fees and costs pursuant to California Labor Code section
20 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
21 Labor Code sections 201, 202, 203, 204, 226(a), 226.2, 226.7, 510, 512(a), 516, 1174(d),
22 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

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

26 63. As to the Eleventh Cause of Action That the Court declare, adjudge and decree
27 that Defendants' conduct of failing to separately compensate Plaintiff and class members for
28 rest and recovery periods and/or other nonproductive time when paying them on a piece-rate

1 basis, failing to provide Plaintiff and class members all minimum wages due to them, failing to
2 provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff
3 and class members all meal periods, failing to authorize and permit Plaintiff and class members
4 to take all rest periods, failing to provide Plaintiff and class members accurate and complete
5 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
6 failing to timely pay Plaintiff and class members all earned wages during employment, and
7 failing to reimburse Plaintiff and class members for business-related expenses, constitutes an
8 unlawful business practice in violation of California Business and Professions Code sections
9 17200, *et seq.*;

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

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

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

18 67. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 **As to the Twelfth Cause of Action**

21 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
22 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an
23 unfair business practice in violation of California Business and Professions Code sections
24 17200, *et seq.*;

25 69. For restitution of the statutory benefits under section 226.7 unfairly withheld
26 from Plaintiff and class members and prejudgment interest from the day such amounts were due
27 and payable;

28 70. For the appointment of a receiver to receive, manage and distribute any and all

1 funds disgorged from Defendants and determined to have been wrongfully acquired by
2 Defendants as a result of violations of California Business & Professions Code sections 17200,
3 *et seq.*;

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

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

7 73. For such other and further relief as the Court may deem equitable and
8 appropriate.

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10 Dated: August 10, 2021

Respectfully submitted,

Capstone Law APC

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13 By: 

Mark A. Ozzello

Brandon K. Brouillette

Joseph Hakakian

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15 Attorneys for Plaintiff Osvaldo Figueroa
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EXHIBIT 1



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

May 24, 2021

VIA ONLINE SUBMISSION

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

Subject: *Osvaldo Figueroa v. R.C. Packing, LLC, et al.*

Dear PAGA Administrator:

This office represents Osvaldo Figueroa in connection with his claims under the California Labor Code. Mr. Figueroa was an employee of R.C. PACKING, LLC and/or R.C. FARMS, LLC. For the purpose of this letter, Mr. Figueroa collectively refers to these entities as "RCP."

The employers may be contacted directly at the addresses below:

R.C. PACKING, LLC
26769 EL CAMINO REAL NORTH
GONZALES CA 93926

R.C. FARMS, LLC
23527 BELMONT CIR
SALINAS CA 93908

Mr. Figueroa 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. Figueroa seeks relief on behalf of himself, the State of California, and other persons who are or were employed by RCP as a non-exempt employee paid on an hourly and/or piece-rate basis 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.

RCP employed Mr. Figueroa as a non-exempt Broccoli Picker and Harvester from approximately July 2020 to September 2020. Mr. Figueroa worked for RCP at its location in Greenfield, California. During his employment, Mr. Figueroa typically worked eight (8) hours or more per day and five (5) days per week. Mr. Figueroa was typically compensated a piece-rate for productive time that varied based on the type of crop harvested, and was sometimes paid an hourly rate for harvesting crops and for other nonproductive time. Mr. Figueroa's primary job duties included, without limitation, cutting and picking broccoli vegetables, driving tractors, and cleaning his work area.

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

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

R.C. PACKING, LLC and R.C. FARMS, LLC are California limited liability companies and a family-owned premium grower, harvester, and shipper of high-quality fresh fruits and vegetables. Upon information and belief, RCP maintains a single, centralized Human Resources (HR) department at its company headquarters in Gonzales or Salinas, California, for all non-exempt employees working for RCP in California, including Mr. Figueroa and other aggrieved employees. At all relevant times, RCP issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt employees in California, including Mr. Figueroa and other aggrieved employees, regardless of its location or position.

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

Violation of California Labor Code § 226.2 – Failure to Separately Compensate for Rest and Recovery Periods and/or Other Nonproductive Time

California Labor Code section 226.2 requires employers that utilize a piece-rate compensation plan to separately compensate employees for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates. Labor Code section 226.2 further requires that employers provide employees compensated on a piece-rate basis with itemized statements stating the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and the total hours of other nonproductive time, as specified, the rate of compensation, and the gross wages paid for that time during the pay period.

During the relevant time period, RCP adopted a company-wide compensation plan whereby it paid Mr. Figueroa and other aggrieved employees on a piece-rate basis for the performance of certain activities and assignments. For example, RCP paid Mr. Figueroa a flat rate for each container of broccoli vegetable harvested, depending on what part of the broccoli vegetable was picked, including, but not limited to, broccoli crowns, broccoli florets, broccoli spears, or broccoli stems. Other aggrieved employees were similarly paid on a piece-rate basis for harvesting crops. However,

¹ These facts, theories, and claims are based on Mr. Figueroa’s experience and counsel’s review of those records currently available relating to Mr. Figueroa’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. Figueroa 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.

RCP failed to separately compensate Mr. Figueroa and other aggrieved employees for all nonproductive time, including but not limited to, such non-harvesting activities as assembling boxes, preparing trailers, and moving tractor vehicles. For example, approximately 2-3 times per week, RCP required Mr. Figueroa and other aggrieved employees to report to work 30 minutes prior to their scheduled shifts to prepare for the day's harvesting, such as assembling boxes for packed broccoli and preparing trailers. As a further example, twice per week, Mr. Figueroa was required to spend up to 30 minutes after he completed his harvesting tasks driving tractors to their designated locations. RCP did not record or track the time Mr. Figueroa and other aggrieved employees spent assembling boxes, preparing trailers, and moving tractor vehicles, and did not compensate Mr. Figueroa and other aggrieved employees for all of this nonproductive time.

In addition, RCP had, and continues to have, a company-wide policy of failing to separately pay other aggrieved employees for rest and recovery periods as required by law. During the relevant time period, RCP did not separately pay other aggrieved employees paid on a piece-rate basis for rest and recovery periods.

RCP also failed to provide Mr. Figueroa and other aggrieved employees with itemized statements listing the total hours of all nonproductive time and/or total hours of compensable rest and recovery periods, and other required details regarding payment for nonproductive time and/or rest and recovery periods. RCP further did not provide Mr. Figueroa and other aggrieved employees with itemized statements showing the rates at which they were paid for all nonproductive time and/or rest and recovery periods.

RCP's failure to separately compensate Mr. Figueroa and other aggrieved employees for all rest and recovery periods and other nonproductive time at or above specified minimum hourly rates, as well as RCP's failure to provide Mr. Figueroa and other aggrieved employees with the requisite itemized statements, violates California Labor Code section 226.2.

Mr. Figueroa 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 §§ 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 the applicable Industrial Welfare Commission ("IWC") Wage Order 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").

During the relevant time period, RCP paid Mr. Figueroa and other aggrieved employees on an hourly basis as an alternative to a piece-rate basis. However, RCP did not record actual hours worked by Mr. Figueroa and other aggrieved employees and/or did not pay them for all hours that they were suffered or permitted to work. On information and belief, RCP 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, RCP 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. Moreover, on these timesheets, RCP's supervisors only entered Mr. Figueroa's and other aggrieved employees' shift start-times, shift end-times, meal period start- and end-times, and rest period start- and end-times with the hours they were scheduled, instead of their actual hours worked. Thus, when RCP's supervisors required Mr. Figueroa and other aggrieved employees to start working before their scheduled shifts and/or after their scheduled shifts as described above, RCP did not compensate Mr. Figueroa and other aggrieved employees for this time worked before and/or after their scheduled shifts.

Second, RCP had a company-wide policy and/or practice of rounding employee punch-in and punch-out times to the nearest quarter hour. Upon information and belief, RCP's rounding policy is, and continues to be, unfair and has, over time, resulted in the underpayment of wages to Mr. Figueroa and other aggrieved employees.

Third, RCP has, on a company-wide basis, failed to adhere to a schedule of meal periods. This practice, coupled with the heavy workload and pressure from RCP to complete assigned tasks, impeded Mr. Figueroa and other aggrieved employees from taking timely, compliant meal periods. Specifically, RCP had a daily crew production goal of having Mr. Figueroa and other aggrieved employees fill eight (8) trailers, each containing eight (8) pallets of packed broccoli vegetables. Moreover, Mr. Figueroa and other aggrieved employees were required to discuss work-related matters with supervisors and management during unpaid meal periods. For example, Mr. Figueroa's and other aggrieved employees' meal periods were interrupted once per week by RCP's supervisors to discuss work-related issues, such as proper cutting or harvesting techniques, which could take up to 10-15 minutes. As a result, Mr. Figueroa and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. RCP did not pay Mr. Figueroa and other aggrieved employees for the time they continued to perform tasks during meal periods.

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

Thus, RCP did not pay at least minimum wages for all hours worked by Mr. Figueroa and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, RCP 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, RCP regularly failed to pay at least minimum wages to Mr. Figueroa 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. Figueroa 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 §§ 510 and 1198 – Unpaid Overtime

California Labor Code section 510 requires employers to pay employees at the overtime rate of time-and-one-half (1 ½) 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 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 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.

RCP willfully failed to pay all overtime wages owed to Mr. Figueroa and other aggrieved employees. During the relevant time period, Mr. Figueroa 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.

As set forth above, as a result of RCP's company-wide policy and/or practice of not permitting employees to record all their hours worked, RCP failed to record all hours worked outside of scheduled shifts or during meal periods. Also, as stated above, RCP maintained a policy and/or practice requiring Mr. Figueroa and other aggrieved employees to perform work off-the-clock prior to start of their shifts and after the end of their shifts. In addition, RCP's practices of rounding employee punch-in and punch-out times to the nearest quarter hour is, and continues to be, unfair and has, over time, resulted in the underpayment of wages to Mr. Figueroa and other aggrieved employees. To the extent RCP's rounding policy took away time worked that was eligible for overtime, Mr. Figueroa and other aggrieved employees were denied overtime pay for all hours worked. Furthermore, due to RCP's policies and/or practices of failing to schedule meal periods and assigning heavy workloads, Mr. Figueroa 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.

RCP knew or should have known that as a result of these company-wide practices and/or policies, Mr. Figueroa 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. Figueroa and other aggrieved employees sometimes worked shifts of the applicable maximum hours in a day and/or the applicable maximum hours in a week, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Figueroa

and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, RCP did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, RCP paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, RCP 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, RCP failed to pay all overtime wages by paying a lower overtime rate than required.

RCP's failure to pay Mr. Figueroa 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. Figueroa 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 §§ 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 (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, RCP did not have a mechanism in place for employees to track and record the start and stop times of their meal periods. Instead, RCP gave its supervisors exclusive control and discretion over employee punch-in and punch-out times, including meal period start and stop times. Because Mr. Figueroa 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, RCP implemented a company-wide policy and practice of automatically deducting meal periods from Mr. Figueroa's and other aggrieved employees' time records regardless of whether they had actually received a compliant meal period.

Additionally, RCP had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads and failing to adhere to scheduled meal periods, which resulted in a lack of meal period coverage and prevented Mr. Figueroa and other

aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Consequently, Mr. Figueroa 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, twice per week, Mr. Figueroa was only provided with his meal period after working in excess of five (5) hours due to his heavy workload. As a further example, as stated above, Mr. Figueroa and other aggrieved employees also had their meal periods interrupted by supervisors once per week to discuss work-related issues.

Furthermore, during the relevant time period, RCP maintained and implemented a company-wide on-premises meal period policy, which mandated that Mr. Figueroa and other aggrieved employees remain on the work premises during their meal periods. Because Mr. Figueroa and other aggrieved employees were restricted from leaving the premises during meal periods, Mr. Figueroa and other aggrieved employees were denied the ability to use meal periods freely for their own purposes, such as relaxing in their cars, picking up food, or running personal errands. Thus, RCP effectively maintained control over Mr. Figueroa and other aggrieved employees during meal periods. Mr. Figueroa 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.

At all times herein mentioned, RCP knew or should have known that, as a result of its company-wide policies and/or practices, Mr. Figueroa and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. RCP further knew or should have known that it did not pay Mr. Figueroa and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted. As stated above, RCP's supervisors entered Mr. Figueroa's and other aggrieved employees' meal period start- and end-times on their timesheets with the hours they were scheduled, regardless of if or when meal periods were actually taken.

Furthermore, RCP 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. Figueroa and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that RCP did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, RCP did not pay other aggrieved employees at the correct rate of pay for premiums because RCP 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, RCP failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Figueroa 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 (3 ½) 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, RCP regularly failed to authorize and permit Mr. Figueroa 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, RCP’s company-wide practices, including understaffing and assigning of heavy workloads, prevented Mr. Figueroa and other aggrieved employees from being relieved of all duty to take their rest periods. Additionally, RCP failed to adhere to a schedule of rest periods, which, coupled with RCP’s failure to provide adequate rest period coverage, further led to Mr. Figueroa and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, during the relevant time period, RCP maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Figueroa and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Figueroa 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 or relaxing in their cars. Thus, RCP effectively maintained control over Mr. Figueroa and other aggrieved employees during rest periods.

As a result of RCP’s practices and policies, Mr. Figueroa 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. Figueroa missed his rest periods five (5) times per week in order to complete the work-related duties RCP assigned to him.

RCP 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 RCP did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, RCP did not pay other aggrieved employees at the correct rate of pay for premiums because RCP 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, RCP failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Figueroa 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. RCP has not provided Mr. Figueroa 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, RCP has knowingly and intentionally provided Mr. Figueroa and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, RCP issued uniform wage statements to Mr. Figueroa 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, RCP violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because RCP did not record the time Mr. Figueroa and other aggrieved employees spent working off-the-clock, improperly rounded their total hours worked, deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), and failed to provide itemized statements listing the total hours of all rest and recovery periods and/or other nonproductive time and other required details regarding payment for rest and recovery periods and/or other nonproductive time, RCP did not list the correct amount of gross wages and net wages earned by Mr. Figueroa and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, RCP failed to accurately list the total number of hours worked by Mr. Figueroa 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).

Also, because RCP did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, RCP did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, RCP also failed to list the correct amount of net wages in violation of section 226(a)(5). RCP 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 inclusive dates of the period for which aggrieved employees were paid; failing to list the name and address of the legal entity that is the employer; 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), RCP willfully failed to maintain accurate payroll records for Mr. Figueroa 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 and improperly rounding their total hours 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, due to its aforementioned timekeeping practices and/or policies, RCP failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Figueroa and other aggrieved employees, in violation of section 1198. Furthermore, in light of RCP’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, RCP kept no records of meal start and end times for second meal periods.

Because RCP failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Figueroa 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. Figueroa 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. Figueroa 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, RCP willfully failed to pay Mr. Figueroa and other aggrieved employees all wages due including, but not limited to, compensation for rest and recovery periods and/or other nonproductive time, minimum wages, overtime wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

Mr. Figueroa 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.

RCP willfully failed to pay Mr. Figueroa and other aggrieved employees who are no longer employed by RCP the earned and unpaid wages set forth above, including but not limited to, compensation for rest and recovery periods and/or other nonproductive time, minimum wages, overtime wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving RCP's employ.

Mr. Figueroa 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."

RCP, on a company-wide basis, required Mr. Figueroa and other aggrieved employees to purchase basic tools that were necessary for the completion of assigned tasks. For example, Mr. Figueroa spent \$20.00 on a pruning knife that was needed to harvest broccoli vegetables. RCP failed to provide these basic tools to Mr. Figueroa and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Figueroa and other aggrieved employees for the costs of these tools.

RCP could have provided Mr. Figueroa and other aggrieved employees with the actual tools for use on the job, such as basic tools and supplies, or, RCP could have reimbursed employees for their expenses. Instead, RCP passed these operating costs off onto Mr. Figueroa and other aggrieved employees. At all relevant times, Mr. Figueroa did not earn at least two (2) times the minimum wage.

Thus, RCP 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. Figueroa 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).

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." RCP, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Figueroa's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Figueroa 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. Figueroa, 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 RCP for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.2, 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Figueroa 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: R.C. PACKING, LLC (via U.S. Certified Mail); R.C. FARMS, LLC (via U.S. Certified Mail)

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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.

FIRST AMENDED COMPLAINT

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

on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [] to interested parties as follows [or] [✓] as stated on the attached service list:

Registered Agent for R.C. Packing, LLC and R.C. Farms LLC

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

Matthew Krout
Type or Print Name

Signature