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on behalf of himself and all others similarly situated
7

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN JOAQUIN
10

11 JULIAN P. LEAL, an individual, on
behalf of himself and all others similarly
12 situated,

13 Plaintiff,

14 vs.

15 TAYLOR FARMS PACIFIC, INC., a
California corporation, and DOES 1
16 through 25, inclusive,

17 Defendants.
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Case No. STK-CV-UOE-2021-0003972

Assigned To: Judge Jayne Lee, Dept. 10C

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Underpaid Sick Leave
- (2) Incorrect Calculation Of The Regular Rate (Overtime)
- (3) Incorrect Calculation Of Meal & Rest Period Premiums
- (4) Failure To Provide Compliant Meal Periods
- (5) Failure To Provide Compliant Rest Periods
- (6) Unpaid Wages For Meal Periods Worked
- (7) Unreimbursed Expenses
- (8) Failure to Provide Accurate Wage Statements
- (9) Failure To Pay All Wages Due Upon Separation
- (10) Unlawful Or Unfair Business Practices
- (11) Representative Action Under PAGA

DEMAND FOR JURY TRIAL

1 Plaintiff Julian P. Leal ("Plaintiff") brings this action on behalf of himself and others
2 similarly situated, and on information and belief alleges as follows:

3 **PARTIES, JURISDICTION AND VENUE**

4 1. Plaintiff is an individual and a resident of California, in the County of San
5 Joaquin.

6 2. Defendant Taylor Farms Pacific, Inc. ("Taylor Farms" or the "Company") is a
7 California Corporation.

8 3. Taylor Farms is a food producer and processor with several California
9 locations, including a facility in Tracy, California.

10 4. Plaintiff worked for Taylor Farms as a non-exempt hourly employee for
11 several years in Tracy. By way of this Complaint, Plaintiff seeks unpaid wages, statutory
12 penalties, and other monetary relief that render this matter an "unlimited" civil case within
13 the meaning of California law. This Complaint invokes all forms of applicable tolling,
14 including, without limitation, the tolling provided by the Judicial Council's emergency rules.
15 Plaintiff has exhausted his administrative remedies with the California Labor & Workforce
16 Development Agency, and this amended Complaint asserts civil penalty claims under the
17 Private Attorneys General Act of 2004 ("PAGA").

18 5. The true names and capacities of the Doe Defendants (Does 1 through 25,
19 inclusive) are unknown to Plaintiff at this time and Plaintiff is informed and believes that
20 they are in some way liable for the illegal conduct, injury, and damages alleged herein. The
21 Doe Defendants are believed to be co-employers, responsible executives, or otherwise liable
22 for the conduct complained of herein, whether because of alter-ego status, agency principles,
23 aider and abettor (or co-conspirator) status, statutorily-imposed responsibility (*e.g.*, Labor
24 Code section 558.1), or otherwise.

25 6. The Court has personal jurisdiction over Taylor Farms because it is a citizen
26 of this State, does business in this State, and otherwise has minimum contacts with this State.
27 The Court has personal jurisdiction over Plaintiff because he is a resident of California and
28 has sufficient minimum contacts with this State. Venue is proper in San Joaquin County

1 inasmuch as Plaintiff and one or more current or former employees of the Class described
2 herein are residents of San Joaquin County, Taylor Farms has business operations in San
3 Joaquin County, and part of the alleged unlawful conduct and/or its effects occurred in San
4 Joaquin County.

5 CLASS ALLEGATIONS

6 7. Plaintiff brings this action pursuant to California Code of Civil Procedure
7 section 382, on behalf of himself and the Class described below. The Class is comprised of
8 and defined as:

9 Class: All current and former non-exempt employees of Taylor Farms
10 who worked at any of its locations in California at any time from the
11 period beginning four years before the filing of this action until the
12 date of certification (hereafter, the "Class Period") and who are
13 California residents.

14 8. There exists a well-defined community of interest among the Class, and the
15 Class is readily ascertainable for the following reasons:

16 (a) The members of the Class are so numerous that joinder of all members
17 in a single action would not be feasible or practical. Plaintiff alleges on information and
18 belief that the members of the Class exceed one hundred (100) persons.

19 (b) Plaintiff's claims are typical of the claims of the rest of the Class, and
20 Plaintiff will fairly and adequately represent the interests of the Class.

21 (c) Common issues of fact or law predominate in this action over any
22 purported individual issues. Specifically, the following common issues of fact or law
23 predominate and make this class action superior to individual actions:

24 (i) Whether Plaintiff and the rest of the Class are entitled to recover
25 unpaid sick leave because Taylor Farms issued sick leave payments at the employee's base
26 hourly rate, instead of their regular rate, as required by California law;

27 (ii) Whether Plaintiff and the rest of the Class are entitled to recover
28 unpaid overtime and double-time compensation because Taylor Farms did not include

1 compensatory items (e.g., non-discretionary bonuses) in the regular rate;

2 (iii) Whether Plaintiff and the rest of the Class are entitled to recover
3 unpaid meal and rest period premiums because Taylor Farms did not pay such premiums at
4 the correct rate of pay;

5 (iv) Whether Taylor Farms failed to issue legally-compliant wage
6 statements to Plaintiff and Class members;

7 (v) Whether Taylor Farms failed to pay all wages due Plaintiff and
8 separated Class members as required by California law; and

9 (vi) Whether the Company's practices have constituted unlawful or
10 unfair practices under Business and Professions Code sections 17200 *et seq.*

11 (d) Plaintiff reserves the right under all applicable law, including Rule
12 3.765(b) of the California Rules of Court, to further divide the Class into subclasses or seek
13 certification on particular issues. One such subclass is alleged in this Complaint as follows:

14 Device-Carrying Subclass: All members of the Class who were issued a
15 portable communication device such as a walkie-talkie or two-way radio by
16 Taylor Farms ("Device-Carrying Subclass").

17 9. There exists a well-defined community of interest among the Device-Carrying
18 Subclass, and this subclass is readily ascertainable for the following reasons:

19 (a) The members of the subclass are so numerous that joinder of all
20 members in a single action would not be feasible or practical. Plaintiff alleges on
21 information and belief that the members of the subclass exceed fifty (50) persons.

22 (b) Plaintiff's claims are typical of the claims of the rest of the subclass,
23 and Plaintiff will fairly and adequately represent the interests of the subclass.

24 (c) Common issues of fact or law predominate in this action over any
25 purported individual issues. Specifically, the following common issues of fact or law
26 predominate and make this class action superior to individual actions:

27 (i) Whether Plaintiff and the rest of the Device-Carrying Subclass
28 are entitled to recover unpaid wages and meal and rest period premiums because they were

1 not provided with duty-free, uncontrolled meal periods and rest breaks; and

2 (ii) Whether Plaintiff and the rest of the Device-Carrying Subclass
3 are entitled to recover unpaid expenses under Labor Code section 2802 because they were
4 required to charge their Company-issued equipment at their homes without reimbursement.

5 10. The issues which may be jointly tried in this action, when compared to any
6 purported individual issues, are so numerous and/or substantial that the maintenance of a
7 class action would be advantageous to the judicial process and the litigants. A class action
8 is superior to other means for a fair and efficient adjudication of this controversy.

9 **ALLEGED WAGE-AND-HOUR VIOLATIONS**

10 11. During the Class Period, Taylor Farms provided employees (Plaintiff
11 included) with compensatory items besides normal hourly pay, including non-discretionary
12 bonuses, hazard pay, retroactive pay adjustments, and holiday pay which functioned as an
13 attendance bonus (collectively, "Compensatory Items").

14 12. During the Class Period, Taylor Farms issued certain employees (Leal
15 included) with a portable communication device to utilize for work-related purposes.

16 13. During the Class Period, Taylor Farms maintained policies and practices
17 governing the working conditions of, and payment of wages to, Plaintiff and the rest of the
18 Class. As alleged below, these policies and practices violated California's labor laws and
19 constituted unlawful or unfair business practices under Business and Professions Code
20 sections 17200 et seq.

21 14. Specifically, during the Class Period, Taylor Farms committed various
22 violations of California's Labor Code and the applicable Wage Order, including:

23 (a) Deficient Sick Leave Payouts. During the Class Period, Taylor Farms
24 had a policy or practice of paying sick leave out at the employee's base hourly rate, instead
25 of their regular rate as required by the Labor Code.

26 (b) Incorrect Calculation Of The Regular Rate. During the Class Period,
27 Taylor Farms failed to properly include all Compensatory Items in the regular rate of pay or
28

1 otherwise make proper overtime adjustments for these Compensatory Items. Thus, Taylor
2 Farms failed to pay all wages owed, including overtime and double-time wages.

3 (c) Meal Period & Rest Break Premiums. During the Class Period, when
4 Taylor Farms issued meal or rest period premiums to employees, Taylor Farms did not pay
5 the meal period premiums at the regular rate.

6 (d) Failure To Provide Duty-Free, Uncontrolled Meal Periods. Leal and
7 other Device-Carrying Subclass members were required to carry their Company-issued
8 walkie-talkies, two-way radios, or other similar devices with them on their meal periods and
9 rest breaks, were required to listen for Company-related communications, and were required
10 to respond when they received an inquiry on their meal periods and rest breaks.
11 Consequently, the meal periods and rest breaks of the Device-Carrying Subclass were not
12 completely duty-free or free from all employer control. Therefore, their "meal periods" and
13 "rest breaks" were fully compensable and violative of Taylor Farms' meal period and rest
14 break obligations.

15 (e) Failure To Reimburse For Expenses. Taylor Farms failed to pay Leal
16 and other Device-Carrying Subclass for all their work-related expenses. Among other
17 things, Leal and other Device-Carrying Subclass members were required to take home and
18 charge their walkie-talkies, two-way radios, or other similar devices in their residences, and
19 were not properly reimbursed for the associated utility/electrical expenses.

20 (f) Inaccurate Wage Statements. Taylor Farms failed to provide accurate
21 wage statements to Plaintiff and the rest of the Class. Taylor Farms failed to issue accurate
22 wage statements to Plaintiff and the rest of the Class as a consequence of: (i) the deficient
23 sick leave payouts, (ii) the failure to properly include the Compensatory Items in the regular
24 rate of pay, (iii) the failure to list the applicable period as to which the Compensatory Items
25 applied, and (iv) the failure to pay the meal period and rest period premiums at the correct
26 rate. Moreover, (v) Taylor Farms did not provide wage statements showing the total hours
27 worked to the Class. In addition, as to the Device-Carrying Subclass, Taylor Farms' wage
28 statements were inaccurate as a result of (vi) the uncompensated controlled meal periods,

1 and (vii) the failure to pay these employees the meal period or rest period premiums to which
2 they were and are entitled.

3 (g) Failure To Pay All Wages Due Upon Separation From Employment.

4 Taylor Farms failed to pay, in the final paychecks (or direct deposits) issued to them, all
5 wages due Plaintiff and the rest of the former employees in the Class. Specifically, Taylor
6 Farms failed to pay all wages due Plaintiff and the rest of the separated Class members as a
7 consequence of the: (i) the deficient sick leave payouts, (ii) the failure to properly include
8 the Compensatory Items in the regular rate of pay, and (iii) the failure to pay the meal period
9 and rest period premiums at the correct rate. In addition, as to separated members of the
10 Device-Carrying Subclass, Taylor Farms failed to pay all wages due to them as a
11 consequence of: (iv) their uncompensated controlled meal periods, and (v) their non-receipt
12 of the meal period or rest period premiums to which they were and are entitled.

13 **FIRST CAUSE OF ACTION**

14 Underpaid Sick Leave

15 (Against Taylor Farms And Does 1 Through 25, Inclusive)

16 15. Plaintiff re-alleges and incorporates by reference herein the allegations set
17 forth above in Paragraphs 1 through 14 inclusive. The allegations in this cause of action
18 apply to the Class as defined above.

19 16. At all relevant times, Plaintiff and Class members were non-exempt
20 employees at Taylor Farms entitled to the full protections of the Labor Code and of the Wage
21 Orders.

22 17. Labor Code section 246(l)(1)-(2) specifies that when paid sick leave is
23 provided to employees, it must be paid in a certain manner:

24 "For the purposes of this section, an employer shall calculate paid sick
25 leave using any of the following calculations:

26 (1) Paid sick time for nonexempt employees shall be calculated in the
27 same manner as the regular rate of pay for the workweek in which the
employee uses paid sick time, whether or not the employee actually
works overtime in that workweek.

28 (2) Paid sick time for nonexempt employees shall be calculated by
dividing the employee's total wages, not including overtime premium

1 pay, by the employee's total hours worked in the full pay periods of
2 the prior 90 days of employment."

3 18. For purposes of this cause of action, the quoted formulas set forth in (1) and
4 (2) above are referred to as the "regular rate."

5 19. Labor Code sections 233 and 246.5(c) make it unlawful for an employer to
6 "deny" an employee the paid sick leave to which they are legally entitled.

7 20. Whenever Taylor Farms issued sick leave pay to an employee, Taylor Farms
8 paid the employee their sick leave at the employee's base hourly rate of pay, instead of the
9 regular rate required by Labor Code section 246(l)(1)-(2). For example, if Taylor Farms
10 assigned an employee a base hourly rate of \$15.25 but the employee actually worked a
11 position which paid \$15.50 per hour in regular pay during the workweek, Taylor Farms paid
12 out any sick leave taken during that workweek at \$15.25 per hour (the base hourly rate),
13 rather than the employee's regular rate, which was higher.

14 21. As a result of the foregoing, Plaintiff and the Rest of Class are owed restitution
15 under Business & Professions Code § 17200 et seq. for the sick leave payments which they
16 should have received. The amount of the restitution owed is the difference between what
17 Plaintiff and the rest of the Class were issued in sick leave payouts by Taylor Farms and
18 what they should have been paid had the sick leave payouts been properly calculated based
19 on the regular rate. Plaintiff and the rest of the Class are also entitled to interest on such
20 amounts.

21 22. Moreover, by underpaying employees for their sick leave, Taylor Farms
22 denied employees the paid sick leave to which they were entitled, and thus violated Labor
23 Code section 233, entitling Plaintiff and the Class to the remedies afforded by that section.

24 **SECOND CAUSE OF ACTION**

25 Incorrect Calculation Of The Regular Rate (Overtime)

26 (Against Taylor Farms And Does 1 Through 25, Inclusive)

27 23. Plaintiff re-alleges and incorporates by reference herein the allegations set
28 forth above in Paragraphs 1 through 14 inclusive. The allegations in this cause of action

1 apply to the Class as defined above.

2 24. Labor Code sections 510 and 1194, and Section 3 of the IWC Wage Orders,
3 require employers to pay compensation to their non-exempt employees amounting to no less
4 than one and one-half times their regular rates of pay for all hours worked in excess of eight
5 hours in one workday, all hours worked in excess of forty hours in one workweek, and for
6 the first eight hours worked on a seventh consecutive workday.

7 25. Labor Code sections 510 and 1194, and Section 3 of the IWC Wage Orders,
8 also require employers to pay compensation to their non-exempt employees amounting to
9 no less than two times their regular rates of pay (*i.e.*, double-time) for all hours worked in
10 excess of twelve hours in one workday, and for all hours worked in excess of eight hours on
11 a seventh consecutive workday.

12 26. Labor Code sections 204 and 218 require employers to pay the earned wages
13 of their employees, including overtime and double-time, on a timely and periodic basis.

14 27. At all relevant times, Taylor Farms failed to pay Plaintiff and other Class
15 members all the overtime and double-time wages due to them by maintaining policies and/or
16 practices that failed to properly include Compensatory Items in the regular rate of pay.
17 Stated differently, Taylor Farms did not pay the required overtime or double-time associated
18 with Compensatory Items, which are often referred to as overtime adjustments or true-ups.

19 28. Pursuant to Labor Code section 1194, Plaintiff and Class members are entitled
20 to recover the unpaid balance of the full amount of California overtime wages owed,
21 including interest thereon, reasonable attorney's fees, and costs of suit. Plaintiff and Class
22 members are entitled to recover all damages, penalties and other remedies available for a
23 violation of Labor Code section 510 and the applicable Wage Order.

24 **THIRD CAUSE OF ACTION**

25 Incorrect Calculation Of Meal & Rest Period Premiums

26 (Against Taylor Farms And Does 1 Through 25, Inclusive)

27 29. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 14
28 above as though fully set forth herein. The allegations in this cause of action apply to the

1 Class as defined above.

2 30. Under California law, employers must provide an employee with an additional
3 hour of pay at the employee's "regular rate of compensation" for each workday that an
4 employee is not provided with a meal period or rest period in accordance with California
5 statutory law or the IWC Wage Orders. (Labor Code, § 226.7(c).) These payments are often
6 referred to as meal period premiums and rest period premiums.

7 31. During the Class Period, Taylor Farms would issue meal period and rest period
8 premiums to employees, but Taylor Farms would not pay these premiums out at the
9 employee's "regular rate of compensation" within the meaning of Labor Code section
10 226.7(c). The premiums failed to account for changes in an employee's pay or the
11 Compensatory Items that applied to the same time period as to which the premiums were
12 paid.

13 32. As a result, Plaintiff and the rest of the Class are owed additional meal period
14 and rest period premium pay under Labor Code section 226.7(c), and interest thereon.

15 **FOURTH CAUSE OF ACTION**

16 Failure To Provide Compliant Meal Periods

17 (Against Taylor Farms And Does 1 Through 25, Inclusive)

18 33. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 14
19 above as though fully set forth herein. The allegations in this cause of action apply to the
20 Device-Carrying Subclass as defined above.

21 34. Under California law, all non-exempt employees who work more than five (5)
22 hours in a shift are entitled to take a full 30-minute duty-free meal period. Any meal period
23 must be started no later than after five (5) hours of work. (Labor Code, § 512, subd. (a);
24 IWC Wage Orders § 11.)

25 35. Under California law, all non-exempt employees who work more than ten (10)
26 hours in a shift are entitled to take a second duty-free meal period of thirty (30) minutes.
27 Any second meal period must be started no later than after ten (10) hours of work. (Labor
28 Code, § 512, subd. (a); IWC Wage Orders, § 11.)

1 36. Under California law, employers are forbidden from requiring employees to
2 work during a meal period mandated pursuant to California statutory law or mandated by
3 the IWC Wage Orders. (Labor Code, § 226.7(a).) For meal periods, employers must
4 "relieve the employee of all duty and relinquish any control over the employee and how he
5 or she spends the time." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
6 1004, 1038-1039.)

7 37. Under California law, employers must provide an employee with an additional
8 hour of pay at the employee's "regular rate of compensation" for each workday that an
9 employee is not provided with a meal period or rest period in accordance with California
10 statutory law or the IWC Wage Orders. (Labor Code, § 226.7(c).) These payments are often
11 referred to as meal period premiums and rest period premiums.

12 38. Plaintiff and the rest of the Device-Carrying Subclass were non-exempt
13 employees who worked more than (5) hours in a shift for Taylor Farms and were entitled to
14 meal periods that conformed with California law.

15 39. At all relevant times, Taylor Farms failed to provide Plaintiff and other
16 Device-Carrying Subclass members with legally-compliant meal periods. Plaintiff and other
17 Device-Carrying Subclass members were required to carry their Company-issued walkie-
18 talkies, two-way radios, or other similar devices with them on their meal periods, were
19 required to listen for Company-related communications, and were required to respond when
20 they received an inquiry on their meal periods. Consequently, their meal periods were not
21 completely duty-free or free from all employer control.

22 40. At all relevant times, Taylor Farms failed to pay Plaintiff and the Device-
23 Carrying Subclass members all the required meal period premium pay to which they were
24 entitled as a result of all the meal period violations.

25 41. Taylor Farms' non-provision of compliant meal periods, and non-payment of
26 meal period premiums, violated and is actionable under Labor Code section 512, subdivision
27 (a), and Labor Code sections 226.7, subdivisions (b) & (c).

28 42. As a result of Taylor Farms' violation of California's meal period rules,

1 Plaintiff and the rest of the Device-Carrying Subclass are entitled to, among other things,
2 one (1) hour of pay at the employee's regular rate of pay for each workday in which a meal
3 period violation occurred, plus interest thereon.

4 **FIFTH CAUSE OF ACTION**

5 Failure To Provide Compliant Rest Periods

6 (Against Taylor Farms And Does 1 Through 25, Inclusive)

7 43. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 14
8 above as though fully set forth herein. The allegations in this cause of action apply to the
9 Device-Carrying Subclass as defined above.

10 44. Under California law, employers must authorize and permit all non-exempt
11 employees to take a "net" 10-minute rest period for every four (4) hours worked, or major
12 fraction thereof. (IWC Wage Orders, § 12(A).) More specifically, employers must authorize
13 and permit non-exempt employees to take one 10-minute rest break for shifts from three and
14 one-half (3 ½) hours to six (6) hours in length, two 10-minute rest breaks for shifts of more
15 than six (6) hours up to ten (10) hours in length, three 10-minute rest breaks for shifts of
16 more than ten (10) hours up to fourteen (14) hours in length, and so on. (*Brinker Restaurant*
17 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029.)

18 45. Under California law, it is illegal for an employer to require an employee to
19 work during a rest period that is mandated by California statutory law or an IWC Wage
20 Order. (Labor Code, § 226.7(b).) "California law requires employers to relieve their
21 employee of all work-related duties and employer control during 10-minute rest periods."
22 (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

23 46. Under California law, employers must provide an employee with an additional
24 one (1) hour of pay at their "regular rate of compensation" for each workday that an
25 employee is not provided with a rest period in accordance with California statutory law or
26 IWC Wage Orders. (Labor Code, § 226.7(c).)

27 47. At all relevant times, Plaintiff and the rest of the Device-Carrying Subclass
28 Members worked 3.5 hours or more in a shift and were entitled to rest breaks that conformed

1 with California law.

2 48. At all relevant times, Taylor Farms failed to provide Plaintiff and other
3 Device-Carrying Subclass members with legally-compliant rest breaks. Leal and other
4 Device-Carrying Subclass members were required to carry their Company-issued walkie-
5 talkies, two-way radios, or other similar devices with them on their rest breaks, were required
6 to listen for Company-related communications, and were required to respond when they
7 received an inquiry on their rest breaks. Consequently, their rest breaks were not completely
8 duty-free or free from all employer control.

9 49. At all relevant times, Taylor Farms failed to pay Plaintiff or other members of
10 the Device-Carrying Subclass all the required rest period premium pay for all the rest period
11 violations.

12 50. Taylor Farms' non-provision of compliant rest periods, and non-payment of
13 rest period premiums, violated and is actionable under Labor Code sections 226.7
14 subdivisions (b) & (c).

15 51. As a result of Taylor Farms' violation of California's rest period rules, Plaintiff
16 and the rest of the Device-Carrying Subclass are entitled to, among other things, one (1)
17 hour of pay at the employee's regular rate of pay for each workday in which a rest period
18 violation occurred, plus interest thereon.

19 **SIXTH CAUSE OF ACTION**

20 Unpaid Wages For Meal Periods Worked

21 (Against Taylor Farms And Does 1 Through 25, Inclusive)

22 52. Plaintiff re-alleges and incorporates by reference herein the allegations set
23 forth in Paragraphs 1 through 14 inclusive. The allegations in this cause of action apply to
24 the Device-Carrying Subclass as defined above.

25 53. Labor Code section 1198 makes it unlawful for an employer to employ any
26 person under conditions of employment that violate the Wage Orders.

27 54. Section 2(K) of the IWC Wage Orders define "hours worked" as the "time
28 during which an employee is subject to the control of the employer, and includes all the time

1 the employee is suffered or permitted to work, whether or not required to do so.”

2 55. Labor Code sections 1194 and 1197, and Section 4 of the IWC Wage Orders,
3 require employers to pay their non-exempt employees at least minimum wage for each hour
4 worked.

5 56. In addition, Labor Code sections 204, 223, and 218 require employers to pay
6 the earned wages of their employees, including straight-time wages, on a timely and periodic
7 basis.

8 57. Leal and other Device-Carrying Subclass members were required to carry their
9 Company-issued walkie-talkies, two-way radios, or other similar devices with them on their
10 meal periods, were required to listen for Company-related communications, and were
11 required to respond when they received an inquiry on their meal periods. Consequently,
12 their meal periods were fully compensable. However, Taylor Farms had Leal and the other
13 Device-Carrying Subclass members clock out for meal periods and did not pay Leal and
14 Device-Carrying Subclass members for their time worked on meal periods.

15 58. Plaintiff and the Device-Carrying Subclass members are entitled to the unpaid
16 balance of all forms of unpaid wages owed including straight-time pay, minimum wage, and
17 overtime (including double-time). Pursuant to Labor Code section 1194, Plaintiff and
18 Device-Carrying Subclass members are entitled to recover the unpaid balance of the full
19 amount of California minimum wages and overtime wages owed, including interest thereon,
20 reasonable attorney's fees, and costs of suit. Furthermore, under Labor Code section 1194.2,
21 Plaintiff and Device-Carrying Subclass members are entitled to recover liquidated damages
22 in an amount equal to the California minimum wages unlawfully unpaid and interest thereon.
23 On information and belief, Plaintiff also alleges that Taylor Farms intentionally failed to pay
24 the minimum wage due Plaintiff and the Device-Carrying Subclass, and, therefore, Plaintiff
25 and Device-Carrying Subclass Members are entitled to penalties pursuant to Labor Code
26 section 1197.1. Plaintiff and Device-Carrying Subclass Members are entitled to recover all
27 damages, penalties and other remedies available for a violation of Labor Code section 1197
28 and the General Minimum Wage Order.

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1 64. Labor Code section 226(a) requires that employers furnish to their employees
2 semi-monthly or at the time of each payment of wages, an accurate itemized statement in
3 writing showing such matters as the name of the legal entity that is the employer, the gross
4 wages earned, the total hours worked, the net wages earned and all applicable hourly rates
5 and the corresponding hours worked at those rates during the pay period.

6 65. At all relevant times, Labor Code section 226(a) applied to Taylor Farms'
7 employment of Plaintiff and the rest of the Class.

8 66. At all relevant times, Taylor Farms knowingly and intentionally failed to
9 provide Plaintiff and the rest of the Class with accurate itemized wage statements as required
10 by Labor Code section 226.

11 67. As a result of Taylor Farms' alleged deficient sick leave payouts, the failure to
12 properly include Compensatory Items in the regular rate and pay associated
13 overtime/double-times wages, and the underpayment of meal and rest period premiums,
14 Taylor Farms provided Class members with wage statements that inaccurately reflected their
15 gross wages earned (violating Labor Code section 226(a)(1)), their net wages earned
16 (violating Labor Code section 226(a)(5)), and their applicable rates of pay (violating Labor
17 Code section 226(a)(9)).

18 68. In addition, Taylor Farms failed to provide wage statements to Class members
19 which showed their total hours worked. On its wage statements, Taylor Farms would
20 itemize the "Total Hours" for the pay period, but that hours figure would include items such
21 as the hours assigned to holiday pay, paid vacation, paid sick leave, paid meal period
22 premiums, and paid rest period premiums, which were not actual hours worked. Moreover,
23 when Taylor Farms paid out meal or rest period premiums, Taylor Farms did not label this
24 premium pay in any conspicuous manner on its wage statements, but instead ambiguously
25 listed the pay as "Regular Pay" or something similar, making it impossible to determine from
26 the face of the wage statement whether the hour attributable to this "Regular Pay" was for
27 actual hours worked or for a meal or rest period premium payment. In sum, Taylor Farms
28 inaccurately and misleadingly listed the total hours worked on its wage statements, and the

1 actual total hours worked is not otherwise ascertainable from information appearing on the
2 face of the wage statements, all in violation of Labor Code section 226(a)(2).

3 69. In addition, when Compensatory Items were paid to Class Members, the wage
4 statements also failed to contain the applicable period to which the Compensatory Items
5 applied, in violation of Labor Code § 226(a)(6).

6 70. With respect to Device-Carrying Subclass members, because their meal
7 periods were compensable as hours worked but they did not receive pay during their meal
8 periods, and because they did not receive the meal and rest period premiums to which they
9 were entitled, Taylor Farms failed to provide them with wage statements that accurately
10 reflected their total hours worked (violating Labor Code § 226(a)(2)), their gross wages
11 earned (violating Labor Code § 226(a)(1)), their net wages earned (violating Labor Code §
12 226(a)(5)), and their applicable rates of pay (violating Labor Code § 226(a)(9)).

13 71. Furthermore, Taylor Farms violated Labor Code section 226 by failing to keep
14 on file for at least three (3) years at the place of employment or at a central location within
15 the State of California copies of accurate itemized wage statements as required by Labor
16 Code section 226.

17 72. Plaintiff and the rest of the Class have suffered the requisite injury as result of
18 Taylor Farms' violations of Labor Code section 226, violations which precluded Plaintiff
19 and Class members from being able to "promptly and easily" determine from the wage
20 statement alone one or more the statutorily-required items of information.

21 73. Pursuant to Labor Code section 226 subdivision (e), Plaintiff and the rest of
22 the Class are entitled to recover statutory penalties from Taylor Farms for the wage statement
23 violations, as well as attorney's fees and costs.

24 **NINTH CAUSE OF ACTION**

25 Failure To Pay All Wages Due Upon Separation

26 (Against Taylor Farms And Does 1 Through 25, Inclusive)

27 74. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 14
28 inclusive as though fully set forth herein. Unless specifically stated otherwise, the

1 allegations of this cause of action apply to the Class defined above.

2 75. At all relevant times, Labor Code sections 201 and 202 applied to Taylor
3 Farms and imposed time requirements on tendering to a discharged or quitting employee
4 their final wages. At all relevant times, Labor Code section 201 provided that, if an employer
5 discharged an employee, the employee's wages earned and unpaid at the time of discharge
6 are due and payable immediately. At all relevant times, Labor Code section 202 provided
7 that, if an employee quits without giving 72 hours advance notice, all of his or her wages are
8 due within 72 hours of quitting; if an employee quits and provides 72 hours or more of
9 advance notice, all of his or her wages are due at the time of quitting.

10 76. Taylor Farms willfully failed to pay Plaintiff and the rest of the separated
11 employees in the Class all their wages due in violation of Labor Code sections 201 and 202.

12 77. As a result of Taylor Farms' alleged deficient sick leave payouts, the failure to
13 properly include Compensatory Items in the regular rate and pay associated
14 overtime/double-times wages, and the underpayment of meal and rest period premiums,
15 Taylor Farms did not provide separated Class members (Plaintiff included) with final pay
16 that contained all wages due to them under California law. This deficiency in final pay was
17 willful within the meaning of Labor Code section 203.

18 78. In addition, with respect to the Device-Carrying Subclass members because
19 their meal periods were compensable as hours worked but they did not receive pay during
20 their meal periods, and because they did not receive the meal and rest period premiums to
21 which they were entitled, Taylor Farms did not provide separated Device-Carrying Subclass
22 members (Plaintiff included) with final pay that contained all wages due to them under
23 California law. This deficiency in final pay was willful within the meaning of Labor Code
24 section 203.

25 79. At all relevant times, Labor Code section 203 provided that, if employers (such
26 as Taylor Farms) willfully fail to pay any wages of an employee who is discharged or quits
27 in the time required by Labor Code section 201 or 202, the wages of the employee shall
28 continue as a penalty from the due date thereof at the same rate until paid or until an action

1 therefor is commenced, but the wages shall not continue for more than thirty (30) days.
2 Accordingly, Plaintiff and the rest of the separated employees in the Class are entitled to
3 receive statutory penalties up to a maximum of thirty (30) days, as well as attorney's fees
4 and costs, under Labor Code section 203.

5 **TENTH CAUSE OF ACTION**

6 Unfair Or Unlawful Business Practices

7 (Against Taylor Farms And Does 1 Through 25, Inclusive)

8 80. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 14
9 inclusive as though fully set forth herein. Unless specifically stated otherwise, the
10 allegations of this cause of action apply to the Class defined above.

11 81. At all relevant times, Taylor Farms' practices, as alleged above, have been
12 unfair, unlawful, and harmful to Plaintiff, others similarly situated, and the general public.
13 Taylor Farms' above-alleged practices constitute violations of Business and Professions
14 Code sections 17200 *et seq.* A practice that violates any state law or regulation may
15 constitute the basis of an unlawful business practice prohibited by Business and Professions
16 Code sections 17200 *et seq.*

17 82. Among other things, the following practices of Taylor Farms constitute unfair
18 or unlawful business practices:

19 a. The failure to pay all required sick leave wages to the Class and the
20 improper denial of their sick leave as alleged above;

21 b. The failure to pay the Class the required overtime and double-time
22 wages associated with Compensatory Items;

23 c. The failure to pay meal period and rest period premiums to the Class at
24 the correct rate;

25 d. The failure to provide legally-compliant meal and rest periods, and pay
26 the required meal and rest-period premiums, to Device-Carrying Subclass members as
27 alleged above;

28 e. The failure to reimburse Plaintiff and Device-Carrying Subclass

1 members for their worked-related expenses as alleged above;

2 f. Taylor Farms' failure to provide accurate wage statements as alleged
3 above;

4 g. Taylor Farms' failure to pay all the wages due separated employees as
5 alleged above; and

6 h. Taylor Farms' failure to keep and maintain accurate records as required
7 by law.

8 83. Accordingly, pursuant to Business and Professions Code sections 17200 *et*
9 *seq.*, Plaintiff and the rest of the Class are entitled to restitution of wages and other property
10 held by Taylor Farms and/or other relief requiring Taylor Farms (and any other responsible
11 parties) to pay all wages and other sums due to them and disgorge any ill-begotten gains.

12 84. Plaintiff meets the standing requirements for seeking relief pursuant to
13 Business and Professions Code section 17203, in that he has suffered injury in fact and has
14 lost money as a result of the Taylor Farms' actions, as more fully set forth in this pleading.

15 **ELEVENTH CAUSE OF ACTION**

16 **Representative Action Under PAGA**

17 (Against Taylor Farms And Does 1 Through 25, Inclusive)

18 85. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 79
19 inclusive as though fully set forth herein.

20 86. Pursuant to Labor Code section 2699.3, Plaintiff, on behalf of himself and all
21 other aggrieved employees, brings this action as a representative action under the Private
22 Attorneys General Act of 2004 ("PAGA") for civil penalties based on violations of the
23 California Labor Code and the applicable IWC Wage Order(s).

24 87. Plaintiff has timely and adequately exhausted his administrative remedies
25 under PAGA. Plaintiff submitted his PAGA Notice on May 3, 2021 (incorporated herein
26 by reference and attached hereto as **Exhibit A**), provided a copy of the same to the Company
27 via certified mail, and waited the requisite 65-day time-period before filing this PAGA
28 action in court.

88. Pursuant to Labor Code section 2699.5, Plaintiff asserts this representative action on behalf of himself and other aggrieved employees for civil penalties for the following violations alleged above:

a. The failure to pay all required sick leave wages and the unlawful denial of sick leave;

b. The failure to pay required overtime and double-time wages;

c. The failure to pay meal period and rest period premiums at the correct rate;

d. The failure to provide legally-compliant meal and rest periods, and pay the required meal and rest-period premiums, to Aggrieved Device-Carrying Employees.

e. The failure to reimburse Plaintiff and Device-Carrying Subclass members for their worked-related expenses as alleged above;

f. The failure to provide accurate wage statements;

g. The failure to pay all the wages due separated employees; and

h. The failure to keep and maintain accurate records.

89. Labor Code section 2699(f)(2), in turn, provides that the default civil penalties recoverable under PAGA for such violations are “one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation,” except where the Labor Code specifically provides for another penalty. In addition to the default civil penalties PAGA provides, Plaintiff seeks, through PAGA, any other civil penalties available under the Labor Code (including, without limitation, Labor sections 226.3, 558, and 1174.5) for the above-alleged violations of the Labor Code and/or applicable IWC Wage Order(s).

PRAAYER

WHEREFORE, Plaintiff requests judgment as follows:

On The First Cause Of Action

1. For all recoverable unpaid sick leave wages;

2. For all remedies afforded by the Labor Code, including Labor Code § 233(d);

1 **On The Second Cause Of Action**

2 3. For all recoverable damages and unpaid wages, including overtime and
3 double-time wages;

4 **On The Third Cause Of Action**

5 4. For unpaid premium pay under Labor Code § 226.7;

6 **On The Fourth Cause Of Action**

7 5. For unpaid premium pay under Labor Code § 226.7;

8 **On The Fifth Cause Of Action**

9 6. For unpaid premium pay under Labor Code § 226.7;

10 **On The Sixth Cause Of Action**

11 7. For all recoverable damages and unpaid wages, including unpaid minimum
12 wages, straight-time pay, and overtime wages;

13 8. For liquidated damages pursuant to Labor Code § 1194.2;

14 **On The Seventh Cause Of Action**

15 9. For the full reimbursement of expenses owed, including interest thereon, under
16 Labor Code § 2802;

17 **On The Eighth Cause Of Action**

18 10. For statutory penalties under Labor Code § 226;

19 11. For actual damages incurred as a result of Taylor Farms' issuing inaccurate
20 wage statements, according to proof;

21 **On The Ninth Cause of Action**

22 12. For statutory penalties under Labor Code § 203, up to the statutory amount;

23 **On The Tenth Cause Of Action**

24 13. For restitution of all unpaid sick leave, wages, straight-time, overtime, double-
25 time, minimum wages, premium pay, and other monies withheld from Plaintiff and the rest
26 of the Class together with the disgorgement of any profits received as a result of Taylor
27 Farms' unlawful or unfair business practices;

28 ///

1 **On The First Through Tenth Causes Of Action**

2 14. For a certification of the action as a class action, and for entry of judgment in
3 favor of the Class and Device-Carrying Subclass;

4 **On The Eleventh Cause Of Action**

5 15. For all forms of relief and civil penalties recoverable under PAGA;

6 16. For judgment in favor of the aggrieved employees;

7 **On All Causes Of Action**

8 17. For attorney's fees and costs pursuant to Civil Code § 1021.5, all provisions of
9 the Labor Code that authorize attorney's fees and costs (including, e.g., Labor Code §§ 226,
10 203, 1194(a), 1194.3, 2802, 3287, 3289, and PAGA), the "common fund" theory, the
11 "substantial benefit" theory, the "catalyst" theory, and/or any other applicable statutory
12 provision, regulatory provision, theory or doctrine;

13 18. For prejudgment and postjudgment interest on all amounts owing,
14 commencing from the date such amounts were due; and

15 19. For all such other relief as the Court deems just and proper.

16
17 Dated: July 7, 2021

SCHEPPACH BAUER PC

18
19 By: _____

20 JOHN M. SCHEPPACH
21 Attorneys for Plaintiff,
22 JULIAN P. LEAL, on behalf of himself
23 and all others similarly situated
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Dated: July 7, 2021

By:

JOHN M. SCHEPPACH
Attorneys for Plaintiff,
JULIAN F. LEAL, on behalf of himself
and all others similarly situated

EXHIBIT A

John M. Scheppach
Email: jscheppach@sbpc.law
Direct Dial: (949) 209-8895

PAGA NOTICE

May 3, 2021

VIA CERTIFIED MAIL

Employer

Taylor Farms Pacific, Inc.
Attn: John Mazzei
Registered Agent For Service Of Process
150 Main Street, Suite 400
Salinas, CA 93901

VIA ONLINE SUBMISSION

California Labor & Workforce
Development Agency

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Re: *Julian P. Leal v. Taylor Farms Pacific, Inc.*
PAGA Notice

Dear Employer and the LWDA:

Julian P. Leal ("Leal"), on behalf of himself and all other aggrieved non-exempt employees, and through his undersigned representative, hereby provides notice pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698 – 2699.5 ("PAGA"), of alleged violations of the California Labor Code committed by Taylor Farms Pacific, Inc. ("Taylor Farms" or the "Company"). Pursuant to PAGA, the Labor Code provisions allegedly violated, including the alleged facts and theories in support thereof, are set forth in the paragraphs below. All citations in this PAGA Notice are to the California Labor Code as it is presently constituted. The Labor Code may be amended in one or more respects after the date of this PAGA Notice.

I. BACKGROUND

Taylor Farms is a food producer and processor with several California locations. Leal worked for Taylor Farms as a non-exempt hourly employee in California. During his employment at Taylor Farms, Leal experienced several wage-and-hour violations.

Taylor Farms provided employees (Leal included) with compensatory items besides normal hourly pay, including (without limitation) non-discretionary bonuses, hazard pay, retroactive pay adjustments, and holiday pay which functioned as an attendance bonus (collectively, "Compensatory Items").

Taylor Farms issued certain employees (Leal included) with a portable communication device to utilize for work-related purposes.

PAGA Groups

This PAGA Notice is alleged on behalf of, and contains, two PAGA groups. Leal is a member of both groups.

- The first group is all current and former non-exempt employees of Taylor Farms who worked at any of its locations in California at any time during the applicable limitations period. Leal and all of these other current and former employees are referred to herein collectively as the "Aggrieved Non-Exempt Employees."
- The second group is all current and former non-exempt employees of Taylor Farms who worked at any of its locations in California at any time during the applicable limitations period and were issued a portable communication device such as a walkie-talkie or two-way radio by Taylor Farms ("Aggrieved Device-Carrying Employees").

The members of the Aggrieved Device-Carrying Employees group are also part of the Aggrieved Non-Exempt Employees group. The Aggrieved Device-Carrying Employees group is a subset of the Aggrieved Non-Exempt Employees group.

II. ALLEGED LABOR CODE VIOLATIONS

Leal and the other aggrieved employees have experienced a variety of Labor Code violations. They are discussed below in no particular order.

A. Violations As To The Aggrieved Non-Exempt Employees

1. Underpaid Sick Leave

Labor Code section 246(l)(1)-(2) specifies that when paid sick leave is provided to employees, it must be paid in a certain manner:

"For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the

employee's total hours worked in the full pay periods of the prior 90 days of employment."

For purposes of this section II.A.1, the quoted formulas set forth in (1)-(2) above are referred to as the "regular rate."

Taylor Farms paid out sick leave to employees at their base hourly rate, rather than their regular rate as required by law, resulting in deficient paid sick leave. (Labor Code, § 246(1)(1)-(2).) For example, if Taylor Farms assigned an employee a base hourly rate of \$15.25 but the employee actually worked a position which paid \$15.50 per hour in regular pay during the workweek, Taylor Farms paid out any sick leave taken during that workweek at \$15.25 per hour (the base hourly rate), rather than the employee's regular rate, which was higher. (Labor Code, § 246(1)(1)-(2).) Taylor Farms' failure to properly calculate the regular rate for sick leave purposes and pay employees the proper amount of paid sick leave denied Aggrieved Non-Exempt Employees of the paid sick leave to which they were entitled, in violation of Labor Code §§ 233, 246(1)(1)-(2) and Labor Code § 246.5(c)(1).

In addition, when sick leave was paid out to Aggrieved Non-Exempt Employees, because it was paid at the incorrect rate, the associated payroll records are inaccurate in violation of Labor Code § 1174(d), and the associated wage statements inaccurately reflected the net and gross wages paid to employees, and the applicable rate of pay, in violation of Labor Code section 226(a)(1), (5), and (9).

For those Aggrieved Non-Exempt Employees who have separated from the Company, the incorrect calculation of sick leave payouts has also resulted in final paychecks (or direct deposits) that did not contain all the wages due to them, in violation of Labor Code section 201, 202, 203, 208, 226(a), and 256. This deficiency in final pay was willful.

2. Incorrect Calculation Of The Regular Rate

Taylor Farms was required to, but failed to, properly include Compensatory Items in the regular rate of pay for purposes of calculating overtime and double-time wages owed. Stated differently, Taylor Farms did not pay the required overtime or double-time associated with Compensatory Items, which are often referred to as overtime adjustments or true-ups. Taylor Farms' failure to properly include Compensatory Items in the regular rate has caused the overtime and/or double-time wages of employees to be underpaid, in violation of, and actionable under, Labor Code §§ 204, 218, 510, and 1198.

Moreover, the incorrect calculation of the regular rate and concomitant underpayment of overtime and/or double-time wages has resulted in inaccurate payroll records, in violation of Labor Code § 1174(d), and wage statements issued to employees which inaccurately reflected their net and gross wages, and the applicable rate of pay, in violation of Labor Code section 226(a)(1), (5), and (9). The wage statements also failed to contain the applicable period to which the Compensatory Items applied, in violation of Labor Code § 226(a)(6).

For those Aggrieved Non-Exempt Employees who have separated from the Company, the incorrect calculation of the regular rate and underpayment of overtime and/or double-time wages has also resulted in final paychecks (or direct deposits) that did not contain all the wages due to them, in violation of Labor Code section 201, 202, 203, 208, 226(a), and 256. This deficiency in final pay was willful.

2. Meal & Rest Period Premium Payments

As mentioned, Taylor Farms provided employees with Compensatory Items besides normal hourly pay. Insofar as meal period premiums and rest period premiums must be paid at the regular rate of pay, whenever Taylor Farms paid out meal period or rest period premiums to Aggrieved Non-Exempt Employees, these payments were deficient because they were not calculated based on the employee's regular rate of pay. The meal and rest period premiums paid out by Taylor Farms did not account for changes in an employee's pay or omitted Compensatory Items from the calculation, all in violation of Labor Code § 226.7(c)

Moreover, when Taylor Farms paid out meal or rest period premiums, Taylor Farms did not label this premium pay in any conspicuous manner on its wage statements, but instead ambiguously listed the pay as "Regular Pay" or something similar. Insofar as Labor Code section 226 requires employers to accurately identify and list the meal period and rest period premiums paid to employees on wage statements, Taylor Farms failed to do so, in violation of Labor Code section 226(a)(1), (5), and (9). Moreover, on its wage statements, when Taylor Farms paid out meal period and rest period premiums, Taylor Farms assigned one (1) hour of pay to each premium payment and *included* each such hour in the "Total Hours" worked itemization on its wage statements. However, those assigned hours were *not* actual hours worked. Consequently, whenever meal period and rest period premiums were paid, Taylor Farms inaccurately listed the total hours worked on its wage statements, and the actual total hours worked is not otherwise ascertainable from information appearing on the face of the wage statements, all in violation of Labor Code section 226(a)(2).

For those Aggrieved Non-Exempt Employees who have separated from the Company, insofar as meal period premiums and rest period premiums must be paid at the regular rate of pay, the incorrect calculation of the regular rate and associated underpayment of meal and rest period premiums has also resulted in final paychecks (or direct deposits) that did not contain all the wages due to them, in violation of Labor Code section 201, 202, 203, 208, 226(a), and 256. This deficiency in final pay was willful.

3. Inaccurate Wage Statements

In addition to the wage statement violations mentioned above, the wage statements issued to Aggrieved Non-Exempt Employees failed to accurately show their total hours worked, in violation of Labor Code § 226(a)(2). On its wage statements, Taylor Farms would list the "Total Hours" for the pay period, but that hours figure would include items such as the hours paid for holiday pay, paid vacation, paid sick leave, paid meal period premiums, and paid rest period premiums, which were not actual hours worked. Moreover, the total hours worked was not

otherwise ascertainable from information appearing on the face of the wage statement. All wage statement deficiencies asserted in this PAGA Notice were knowing and intentional. The Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

B. Violations As To The Aggrieved Device-Carrying Employees

1. Meal Periods & Rest Breaks – Not Duty Free And Uncontrolled

Under California law, all non-exempt employees who work more than five (5) hours in a shift are entitled to take an unpaid, duty-free meal period of at least thirty (30) minutes. Meal periods must start after no more than five (5) hours of work. (Labor Code, § 512(a); IWC Wage Orders, § 11.) Under California law, all non-exempt employees who work more than ten (10) hours in a shift are entitled to take a second unpaid, duty-free meal period of at least thirty (30) minutes. Second meal periods must start after no more than ten (10) hours of work. (Labor Code, § 512(a); IWC Wage Orders, § 11.) Employers are forbidden from requiring employees to work during a meal period that is mandated by California statutory law or by an IWC Wage Order. (Labor Code, § 226.7(b).) For meal periods, the employer must "relieve the employee of all duty and relinquish any control over the employee and how he or she spends the time." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038-1039.) Under California law, employers must provide an employee with an additional hour of pay for each workday that an employee is not provided with a meal period "in accordance with" California statutory law or IWC Wage Orders. (Labor Code, § 226.7(c).)

Under California law, all non-exempt employees must be authorized and permitted to take a "net" 10-minute rest break for every four (4) hours worked, or major fraction thereof. (IWC Wage Orders, § 12(A).) More specifically, non-exempt employees must be authorized and permitted to take one 10-minute rest break for shifts from three and one-half (3 ½) hours to six (6) hours in length, two 10-minute rest breaks for shifts of more than six (6) hours up to ten (10) hours in length, three 10-minute rest breaks for shifts of more than ten (10) hours up to fourteen (14) hours in length, and so on. (*Brinker Restaurant Corp.*, 53 Cal.4th at p. 1029.) In terms of rest break duration, California law requires employers to provide employees with a "net" rest time of 10 minutes. (IWC Wage Orders, § 12.)

"California law requires employers to relieve their employee of all work-related duties and employer control during 10-minute rest periods." (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.) An employee's 10 minutes of rest begins the moment the employee can reach an appropriate area of rest and be free from employer control. (*Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 112 [a rest period "begins when the employee reaches an area away from the work station that is appropriate for rest"].) Under California law, it is illegal for an employer to require an employee to work during a rest period that is mandated by California statutory law or an IWC Wage Order. (Labor Code, § 226.7(b).) Under California law, employers must provide an employee with an additional hour of pay for each workday that an employee is not provided with a rest period "in accordance with" California statutory law or IWC Wage Orders. (Labor Code, § 226.7(c).)

Leal and other Aggrieved Device-Carrying Employees were required to carry their Company-issued walkie-talkies, two-way radios, or other similar devices with them on their meal periods and rest breaks, were required to listen for Company-related communications, and were required to respond when they received an inquiry on their meal periods and rest breaks. Consequently, the meal periods and rest breaks of Aggrieved Device-Carrying Employees were not completely duty-free or free from all employer control. Therefore, the "meal periods" and "rest breaks" of Aggrieved Device-Carrying Employees were both fully compensable and violative of Taylor Farms' meal period and rest break obligations.

Because the meal periods and rest breaks of Aggrieved Device-Carrying Employees were not completely duty free or free from any employer control, Taylor Farms violated its meal and rest period obligations under Labor Code § 512(a), Labor Code § 226.7(b), and the applicable IWC Wage Order provisions. (IWC Wage Orders, § 11 [meal periods]; (IWC Wage Orders, § 12 [rest breaks].) The Company did not pay Leal or other Aggrieved Device-Carrying Employees the one hour of premium pay to which they were entitled for the meal and rest period violations. The Company's non-payment of the required meal period and rest breaks premiums violated and is actionable under Labor Code §§ 226.7(c).

Because the meal periods of Aggrieved Device-Carrying Employees were not completely duty free or free from any employer control, the meal periods were fully compensable, but because these employees clocked out for meal periods, these meal periods were unpaid. The Company's failure to compensate Leal and other Aggrieved Device-Carrying Employees for their controlled meal periods caused them to not be paid the applicable California minimum wage for compensable work (in violation of, and actionable under, Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1 & 1199), to not be paid their regular hourly rate for all hours worked (in violation of, and actionable under Labor Code §§ 204 & 218), and to not receive proper overtime and/or double-time compensation (in violation of, and actionable under, Labor Code §§ 204, 510 & 1198). The Company's failure to pay Leal and the other Aggrieved Device-Carrying Employees the overtime, double-time, and/or minimum wages they were due also violates regulatory law. (IWC Wage Orders, § 3 [overtime and double-time requirements], and § 4 [minimum wage requirements].)

As a result of the unpaid controlled meal periods, the Company failed to provide Leal and other Device-Carrying Aggrieved Employees with wage statements that accurately reflected their total hours worked (violating Labor Code § 226(a)(2)), their gross wages earned (violating Labor Code § 226(a)(1)), their net wages earned (violating Labor Code § 226(a)(5)), and their applicable rates of pay and hours worked at those rates (violating Labor Code § 226(a)(9)).

The Company was required to keep, in a centralized location, three years' worth of accurate records showing the hours worked by, and wages paid to, its employees; however, the Company failed to do so in violation of Labor Code § 1174(d). The uncompensated controlled meal periods rendered these records inaccurate.

As a result of the uncompensated controlled meal periods, the Company did not provide separated employees (Leal included) with final pay that contained all wages due to them under California law. This deficiency in final pay was willful within the meaning of Labor Code § 203.

The Company's non-provision of timely and sufficient final pay to separated employees violated, and is actionable under, Labor Code §§ 201, 202, 203, 208, 226(a), and 226.3.

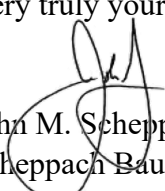
2. Unreimbursed Expenses

Labor Code § 2802 requires employers to fully reimburse employees for expenses incurred in the discharge of their work-related duties or while carrying out the directions of their employer. Taylor Farms failed to pay Leal and other Device-Carrying Aggrieved Employees for all their work-related expenses. Among other things, Leal and other Device-Carrying Aggrieved Employees were required to take home and charge their walkie-talkies, two-way radios, or other similar devices in their residences, and were not properly reimbursed for the associated utility/electrical expenses, in violation of and actionable under Labor Code § 2802(a)-(c).

III. Civil Penalties

For all the above-specified Labor Code violations, Leal, on behalf of himself and all other aggrieved employees, reserves all rights to pursue any and all available civil penalties that California law allows, including the default civil penalties provided by PAGA, and any civil penalties specifically provided by statute for the alleged Labor Code violations (including, without limitation, Labor Code §§ 210, 226.3, 256, 558, 1174.5, and 1197.1) which are recoverable under PAGA. Leal, on behalf of himself and all other aggrieved employees, also reserves the right to assert claims for Labor Code violations and associated penalties that are uncovered in the discovery process but which are presently unknown.

Very truly yours,



John M. Scheppach
Scheppach Bauer PC