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E-FILED
10/1/2021 7:11 PM
Superior Court of California
County of Fresno
By: I. Herrera, Deputy

7 Attorneys for Plaintiff Carlos Vidales Rodriguez

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF FRESNO

11 CARLOS VIDALES RODRIGUEZ, as an
12 aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

13 Plaintiff,

14 vs.

15 WAWONA FROZEN FOODS, a California
16 corporation; CLOVIS FOOD PRODUCTS,
INC., a California Corporation; CLOVIS
17 FOOD PRODUCTS DBA WAWONA
ORCHARDS, a California corporation; and
18 DOES 1 through 10, inclusive,

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20 Defendants.
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Case No.: 21CECG02947

**COMPLAINT - ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE
§§ 2698, *ET SEQ.***

(1) Civil Penalties for Violations of California
Labor Code, Pursuant to PAGA, §§ 2698,
et seq.;

Jury Trial Demanded

1 Plaintiff Carlos Vidales Rodriguez, as an aggrieved employee, and on behalf of the
2 State of California and all aggrieved employees, allege as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code section 2698, et seq. (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly-paid
8 employee (excluding retail banking employees) and who received at least one wage statement,
9 and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of
10 the Labor Code or any provision regulating hours and days of work in the applicable Industrial
11 Welfare Commission (“IWC”) Wage Order were committed, as set forth in this complaint, at
12 any time between one year prior to the filing of the pre-filing written notice to the Labor and
13 Workforce Development Agency (“LWDA”) in this case until judgment (“non-party
14 Aggrieved Employees”), subject to applicable tolling provided under PAGA and any other
15 statute or regulation¹. Plaintiff’s share of damages, penalties, and other relief sought in this
16 action does not exceed \$75,000.

17 2. This Court has jurisdiction over this action pursuant to the California
18 Constitution, Article VI, section 10. The statute under which this action is brought does not
19 specify any other basis for jurisdiction.

20 3. This Court has jurisdiction over all Defendants because, on information and
21 belief, Defendants are either citizens of California, have sufficient minimum contacts in
22 California, or otherwise intentionally avail themselves of the California market so as to render
23 the exercise of jurisdiction over them by the California courts consistent with traditional
24 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
25 in this action given that the State of California, as the real party in interest in this action, is not
26 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,

27
28 ¹ This tolling provided is specifically without limitation to the extension of time
provided by California Rule of Court App I. R.R. Emergency Rule 9.

1 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
2 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
3 in this action, and that diversity jurisdiction cannot be established when Plaintiffs' share of the
4 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

5 4. Venue is proper in this Court, because Defendants filed Statement of
6 Information forms with the California Secretary of State designating a principal place of
7 business in Clovis, County of Fresno, in accordance with California Corporations Code
8 section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because
9 Defendants employ persons in this county, and employed Plaintiff in this county, and thus a
10 substantial portion of the transactions and occurrences related to this action occurred in this
11 county.

12 THE PARTIES

13 5. Plaintiff Carlos Vidales Rodriguez is a resident of Fresno, in Fresno County,
14 California. Plaintiff worked for Defendants as an hourly paid, non-exempt General Laborer at
15 their location in Clovis from approximately July 2020 to October 2020. During his
16 employment, Plaintiff typically worked nine (9) hours or more per day, Monday through
17 Friday, and five (5) hours or more per day on Saturdays. Plaintiff's primary job duties
18 included, without limitation, trimming trees and picking fruit.

19 6. WAWONA FROZEN FOODS was and is, upon information and belief, a
20 California corporation, and at all times hereinafter mentioned, an employer whose employees
21 are engaged throughout this county and the State of California.

22 7. CLOVIS FOOD PRODUCTS, INC. was and is, upon information and belief, a
23 California corporation, and at all times hereinafter mentioned, an employer whose employees
24 are engaged throughout this county and the State of California.

25 8. CLOVIS FOOD PRODUCTS DBA WAWONA ORCHARDS was and is, upon
26 information and belief, a California corporation, and at all times hereinafter mentioned, an
27 employer whose employees are engaged throughout this county and the State of California.

28 9. Plaintiff is unaware of the true names or capacities of the Defendants sued

1 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
2 amend the complaint and serve such fictitiously named Defendants once their names and
3 capacities become known.

4 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
5 were the partners, agents, owners, or managers of WAWONA FROZEN FOODS, CLOVIS
6 FOOD PRODUCTS, INC. and/or CLOVIS FOOD PRODUCTS DBA WAWONA
7 ORCHARDS at all relevant times.

8 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
9 acts and omissions alleged herein was performed by, or is attributable to, WAWONA
10 FROZEN FOODS, CLOVIS FOOD PRODUCTS, INC. and/or CLOVIS FOOD PRODUCTS
11 DBA WAWONA ORCHARDS and/or DOES 1 through 10 (collectively, “Defendants” or
12 “WAWONA”), each acting as the agent, employee, alter ego, and/or joint venturer of, or
13 working in concert with, each of the other co-Defendants and was acting within the course and
14 scope of such agency, employment, joint venture, or concerted activity with legal authority to
15 act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
16 represent, the official policy of Defendants.

17 12. At all relevant times, Defendants, and each of them, ratified each and every act
18 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
19 and abetted the acts and omissions of each and all the other Defendants in proximately causing
20 the damages herein alleged.

21 13. Plaintiff is informed and believes, and thereon alleges, that each of said
22 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
23 omissions, occurrences, and transactions alleged herein.

24 14. Under California law, Defendants are jointly and severally liable as employers
25 for the violations alleged herein because they have each exercised sufficient control over the
26 wages, hours, working conditions, and employment status of Plaintiff and aggrieved
27 employees. Each Defendant had the power to hire and fire Plaintiff and aggrieved employees,
28 supervised and controlled their work schedule and/or conditions of employment, determined

1 their rate of pay, and maintained their employment records. Defendants suffered or permitted
2 Plaintiff and aggrieved employees to work and/or “engaged” Plaintiff and aggrieved
3 employees so as to create a common-law employment relationship. As joint employers of
4 Plaintiff and aggrieved employees, Defendants are jointly and severally liable for the civil
5 penalties and all other relief available to Plaintiff and aggrieved employees under the law.

6 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
7 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and
8 aggrieved employees because Defendants have:

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

24 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
25 there has existed a unity of interest and ownership between Defendants such that any
26 individuality and separateness between the entities has ceased.

27 17. WAWONA FROZEN FOODS, CLOVIS FOOD PRODUCTS, INC. and/or
28 CLOVIS FOOD PRODUCTS DBA WAWONA ORCHARDS and/or DOES 1 through 10 are

1 therefore alter egos of each other.

2 18. Adherence to the fiction of the separate existence of Defendants would permit
3 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
4 from liability for the wrongful acts committed by them under the name WAWONA FROZEN
5 FOODS.

6 19. Plaintiff further alleges, upon information and belief, that Defendants
7 WAWONA FROZEN FOODS, CLOVIS FOOD PRODUCTS, INC. and/or CLOVIS FOOD
8 PRODUCTS DBA WAWONA ORCHARDS are alter egos of each other for the following
9 reasons:

- 10 (a) On the California Secretary of State's website
11 (<https://businesssearch.sos.ca.gov/>), WAWONA FROZEN FOODS,
12 CLOVIS FOOD PRODUCTS, INC. and/or CLOVIS FOOD
13 PRODUCTS DBA WAWONA ORCHARDS. share the same mailing
14 address, "100 W. ALLUVIAL AVENUE CLOVIS CA 93611;"
- 15 (b) On information and belief, WAWONA FROZEN FOODS, CLOVIS
16 FOOD PRODUCTS, INC. and/or CLOVIS FOOD PRODUCTS DBA
17 WAWONA ORCHARDS share the same agent for service of process,
18 "WILLIAM S. SMITTCAMP;" and
- 19 (c) On information and belief, WAWONA FROZEN FOODS, CLOVIS
20 FOOD PRODUCTS, INC. and/or CLOVIS FOOD PRODUCTS DBA
21 WAWONA ORCHARDS utilize the same standardized employment
22 forms and issue the same employment policies.

23 GENERAL ALLEGATIONS

24 20. Defendants specialize in the growing and freezing of fresh fruit, and supplying
25 the retail, club store, foodservice, school, and food ingredient industries with their fruit
26 products. Upon information and belief, Defendants maintain a single, centralized Human
27 Resources ("HR") department at their company headquarters in Clovis, California, which is
28 responsible for the recruiting and hiring of new employees, and communicating and

1 implementing Defendants' company-wide policies, including timekeeping policies and meal
2 and rest period policies, to employees throughout California.

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

10 22. Upon information and belief, Defendants maintain a centralized Payroll
11 department at their company headquarters in Clovis, California, which processes payroll for
12 all non-exempt, hourly paid employees working for Defendants at their various locations and
13 jobsites in California, including Plaintiff and aggrieved employees. Based upon information
14 and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly
15 paid employees in California, irrespective of their work locations. Upon information and
16 belief, Defendants process payroll for departing employees in the same manner throughout the
17 State of California, regardless of the manner in which each employee's employment ends.

18 23. Defendants continue to employ non-exempt or hourly paid employees in
19 California.

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

24 25. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and
25 aggrieved employees were not paid for all hours worked because all hours worked were not
26 recorded.

27 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and aggrieved employees were entitled to receive certain

1 wages for overtime compensation and that they were not receiving certain wages for overtime
2 compensation.

3 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and aggrieved employees were entitled to receive at least
5 minimum wages for compensation and that they were not receiving at least minimum wages
6 for work that was required to be done off-the-clock. In violation of the California Labor
7 Code, Plaintiff and aggrieved employees were not paid at least minimum wages for work done
8 off-the-clock.

9 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
10 or should have known that Plaintiff and aggrieved employees were entitled to meal periods in
11 accordance with the California Labor Code and applicable IWC Wage Order(s) or payment of
12 one (1) additional hour of pay at their regular rates of pay when they were not provided with
13 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and aggrieved
14 employees were not provided with all meal periods or payment of one (1) additional hour of
15 pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30)
16 minute meal period.

17 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and aggrieved employees were entitled to rest periods in
19 accordance with the California Labor Code and applicable IWC Wage Order(s) or payment of
20 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
21 permitted to take a compliant rest period. In violation of the Labor Code, Plaintiff and
22 aggrieved employees were not authorized and permitted to take compliant rest periods, nor did
23 Defendants provide Plaintiff and aggrieved employees with payment of one (1) additional
24 hour of pay at their regular rates of pay when they were not authorized and permitted to take a
25 compliant rest period.

26 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and aggrieved employees were entitled to receive complete
28 and accurate wage statements in accordance with California law. In violation of the California

1 Labor Code, Plaintiff and aggrieved employees were not provided complete and accurate
2 wage statements.

3 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that they had a duty to maintain accurate and complete payroll records in
5 accordance with the California Labor Code and applicable IWC Wage Order(s), but willfully,
6 knowingly, and intentionally failed to do so.

7 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and aggrieved employees were entitled to timely payment of
9 all wages earned upon termination of employment. In violation of the California Labor Code,
10 Plaintiff and aggrieved employees did not receive payment of all wages due, including, but
11 not limited to, overtime wages, minimum wages, and/or meal and rest period premiums,
12 within permissible time periods.

13 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and aggrieved employees were entitled to timely payment of
15 wages during their employment. In violation of the California Labor Code, Plaintiff and
16 aggrieved employees did not receive payment of all wages, including, but not limited to,
17 overtime wages, minimum wages, and/or meal and rest period premiums, within permissible
18 time periods.

19 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and aggrieved employees were entitled to receive full
21 reimbursement for all business-related expenses and costs they incurred during the course and
22 scope of their employment and that they did not receive full reimbursement of applicable
23 business-related expenses and costs incurred.

24 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants knew or should have known that they had a duty to compensate
26 Plaintiff and aggrieved employees for all hours worked, and that Defendants had the financial
27 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,
28 and falsely represented to Plaintiff and aggrieved employees that they were properly denied

wages, all in order to increase Defendants' profits.

PAGA REPRESENTATIVE ALLEGATIONS

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

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

3. 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.

4. 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

1 the postmark date of the aggrieved employee's notice. Upon receipt of
2 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
3 (65) calendar days of the postmark date of the aggrieved employee's
4 notice, the aggrieved employee may commence a civil action pursuant
5 to California Labor Code section 2699 to recover civil penalties.

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

- 10 (a) The aggrieved employee or representative shall give written notice by
11 online filing with the LWDA and by certified mail to the employer of
12 the specific provisions of the California Labor Code alleged to have
13 been violated (other than those listed in Section 2699.5), including the
14 facts and theories to support the alleged violation.
- 15 (b) An aggrieved employee's notice filed with the LWDA pursuant to
16 2699.3(c) and any employer response to that notice shall be
17 accompanied by a filing fee of seventy-five dollars (\$75).
- 18 (c) The employer may cure the alleged violation within thirty-three (33)
19 calendar days of the postmark date of the notice sent by the aggrieved
20 employee or representative. The employer shall give written notice
21 within that period of time by certified mail to the aggrieved employee or
22 representative and by online filing with the LWDA if the alleged
23 violation is cured, including a description of actions taken, and no civil
24 action pursuant to Section 2699 may commence. If the alleged violation
25 is not cured within the 33-day period, the aggrieved employee may
26 commence a civil action pursuant to Section 2699.

27 6. On May 3, 2021, Plaintiff provided written notice by online filing to the
28 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor

1 Code alleged to have been violated, including facts and theories to support the alleged
2 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
3 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
4 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
5 Plaintiff PAGA Case Number LWDA-CM-831031-21. A true and correct copy of Plaintiff's
6 May 3, 2021 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."
7 On June 9, 2021, Plaintiff Carlos Vidales Rodriguez sent an amended written notice by online
8 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
9 California Labor Code alleged to have been violated, supplementing and clarifying the facts
10 and theories to support the alleged violations set forth in his original LWDA notice, in
11 accordance with California Labor Code section 2699.3. A true and correct copy of Plaintiff's
12 June 9, 2021 written notice to the LWDA and Defendants is attached hereto as "Exhibit 2."

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

16 8. As of the filing date of this amended complaint, the required time has passed
17 since Plaintiff sent the LWDA notices described above, and the LWDA has not responded that
18 it intends to investigate Plaintiff's claims and Defendants have not cured the violations.

19 9. Thus, Plaintiff has satisfied the administrative prerequisites under California
20 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
21 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
22 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

23 10. Labor Code section 558(a) provides "[a]ny employer or other person acting on
24 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provision regulating hours and days of work in any order of the Industrial Welfare
26 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
27 dollars (\$50) for each underpaid employee for each pay period for which the employee was
28 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each

1 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
2 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
3 to any other civil or criminal penalty provided by law.”

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

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

10 13. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
11 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
12 private attorney general, seeks assessment and collection of civil penalties for herself, all other
13 aggrieved employees, and the State of California against Defendants for violations of
14 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
15 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

16 **FIRST CAUSE OF ACTION**

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

18 **(Against all Defendants)**

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

21 15. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
22 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
23 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
24 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.
25 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover
26 civil penalties for violations of those Labor Code sections not found in section 2699.5,
27 including sections 516, 1182.12, and 2810.5.

28 16. Defendants’ conduct, as alleged herein, violates numerous sections of the

1 California Labor Code, including, but not limited to, the following:

- 2 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
3 wage order for Defendants' failure to compensate Plaintiff and other
4 aggrieved employees with all required overtime pay and failure to
5 properly calculate the overtime rates paid to Plaintiff and other
6 aggrieved employees, as alleged herein;
- 7 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
8 and the applicable IWC wage order for Defendants' failure to
9 compensate Plaintiff and other aggrieved employees with at least
10 minimum wages for all hours worked, as alleged herein;
- 11 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
12 applicable IWC wage order for Defendants' failure to provide Plaintiff
13 and other aggrieved employees with meal periods, as alleged herein;
- 14 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
15 IWC wage order for Defendants' failure to authorize and permit
16 Plaintiff and other aggrieved employees to take rest periods, as alleged
17 herein;
- 18 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
19 wage order for failure to provide accurate and complete wage statements
20 to Plaintiff and other aggrieved employees, as alleged herein;
- 21 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
22 IWC wage order for failure to maintain payroll records as alleged
23 herein;
- 24 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
25 earned wages upon termination, as alleged herein;
- 26 (h) Violation of Labor Code section 204 for failure to pay all earned wages
27 during employment, as alleged herein; and
- 28 (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff

1 and other aggrieved employees for all business expenses necessarily
2 incurred, as alleged herein; and

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

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

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

24 **FAILURE TO PAY OVERTIME**

25 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

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

28 20. California Labor Code section 510 codifies the right to overtime compensation

1 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
2 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
3 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
4 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
5 in a day on the seventh (7th) day of work.

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

11 22. California Labor Code section 1198 and the applicable IWC Wage Order(s)
12 provide that it is unlawful to employ persons without compensating them at a rate of pay
13 either time-and-one-half or two-times that person's regular rate of pay, depending on the
14 number of hours worked by the person on a daily or weekly basis.

15 23. Specifically, IWC Wage Order 13-2001 provides that Defendants are and were
16 required to pay employees working more than eight (8) hours in a day or more than forty (40)
17 hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of
18 eight (8) hours in a day or more than forty (40) hours in a workweek. IWC Wage Order 13-
19 2001 further provides that Defendants are and were required to pay employees working more
20 than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular
21 rate of pay.

22 24. Additionally, IWC Wage Order 14-2001 provides that, effective January 1,
23 2020, employers are and were required to pay employees working more than nine (9) hours in
24 a day or more than fifty (50) hours in a workweek, at the rate of time and one-half (1 ½) times
25 the regular rate of pay for all hours worked in excess of nine (9) hours in a day or more than
26 fifty (50) hours in a workweek. IWC Wage Order 14-2001 further provides that, starting
27 January 1, 2021, employers are and were required to pay employees working more than eight
28 and one-half (8 ½) hours in a day or more than forty-five (45) hours in a workweek, at the rate

1 of time and one-half (1 ½) for all hours worked in excess of eight and one-half (8 ½) hours in
2 a day or more than forty-five (45) hours in a workweek. An employee's regular rate of pay
3 includes all remuneration for employment paid to, or on behalf of, the employee, including
4 nondiscretionary bonuses and incentive pay.

5 25. During the relevant time period, Defendants willfully failed to pay all overtime
6 wages owed to Plaintiff and aggrieved employees. During the relevant time period, Plaintiff
7 and aggrieved employees were not paid overtime premiums for all of the hours they worked in
8 excess of the applicable maximum hours in a day and/or in excess of the applicable maximum
9 hours in a week, because all hours worked were not recorded.

10 26. First, during the relevant period, Defendants had a company-wide policy and/or
11 practice of failing to accurately record hours worked by their employees and thus restricted
12 overtime accrual. Defendants did not provide employees with any mechanism, such as a
13 handwritten timesheet, time clock, or electronic timekeeping system, to track and record their
14 hours worked. Instead, Defendants had their supervisors input all employee time on
15 handwritten timesheets, and thus maintained exclusive control and discretion over employee
16 punch-in and punch-out times. Moreover, on these timesheets, Defendants' supervisors
17 entered in advance Plaintiff's and aggrieved employees' shift start-times, shift end-times, and
18 meal period start and end times with the hours they were scheduled, instead of their actual
19 hours worked. Defendants required Plaintiff and aggrieved employees to sign these prefilled
20 timesheets every day, around one (1) hour into their shifts.

21 27. For example, approximately once or twice per week, Defendants required
22 Plaintiff and aggrieved employees to report to work 30 minutes early to start their tasks, such
23 as setting up ladders, thinning fruit trees, and picking fruit, before their supervisors clocked
24 them in. As a result, Defendants did not compensate Plaintiff and aggrieved employees for
25 this time worked before and/or after their scheduled shifts. Because Defendants failed to
26 provide Plaintiff and aggrieved employees with any mechanism to record their actual hours
27 worked themselves and, instead, granted Defendants' supervisors exclusive control and
28 discretion over employee time records, Plaintiff and aggrieved employees were not paid for all

1 hours worked.

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

13 29. Third, Defendants have, on a company-wide basis, failed to schedule meal
14 periods. This practice, coupled with the heavy workload and pressure from Defendants to
15 complete assigned tasks, impeded Plaintiff and aggrieved employees from taking timely,
16 compliant meal periods. Specifically, Plaintiff was required to thin at least 26 trees per shift,
17 and on days when they assigned to pick fruit, Plaintiff and aggrieved employees were
18 expected to fill at least four (4) vans per day. Moreover, Plaintiff and aggrieved employees
19 would be required to discuss work-related matters with supervisors and management during
20 unpaid meal periods. For example, Plaintiff's and aggrieved employees' meal periods were
21 interrupted once per week by his supervisors to discuss work-related issues, such as proper
22 thinning techniques. As a result, Plaintiff and aggrieved employees were not afforded timely,
23 uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to
24 receive meal periods. Defendants did not pay Plaintiff and aggrieved employees for the time
25 they continued to perform tasks during meal periods.

26 30. Defendants knew or should have known that as a result of these company-wide
27 practices and/or policies, Plaintiff and aggrieved employees were performing their assigned
28 duties off-the-clock before and after their shifts and during meal periods, and were suffered or

1 permitted to perform work for which they were not paid. Because Plaintiff and aggrieved
2 employees worked shifts of the applicable maximum hours in a day and/or the applicable
3 maximum hours in a week, some of this off-the-clock work qualified for overtime premium
4 pay. Therefore, Plaintiff and aggrieved employees were not paid overtime wages for all of the
5 overtime hours they actually worked.

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

11 **FAILURE TO PAY MINIMUM WAGES**

12 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

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

15 33. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
16 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
17 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
18 fixed is unlawful. Compensable work time is defined in the applicable IWC Wage Order(s) as
19 "the time during which an employee is subject to the control of an employer, and includes all
20 the time the employee is suffered or permitted to work, whether or not required to do so."

21 34. As set forth above, Defendants' company-wide policies and/or practices of not
22 permitting employees to record all their hours worked and limiting overtime accrual,
23 Defendants failed to record all hours worked outside of scheduled shifts or during meal
24 periods. Also, as stated above, Defendants maintained a policy and/or practice requiring
25 Plaintiff and aggrieved employees to perform work off-the-clock prior to clocking in at the
26 start of their shifts and/or after the end of their shifts. Furthermore, due to Defendants'
27 policies and/or practices of failing to schedule meal periods and assigning heavy workloads,
28 Plaintiff and aggrieved employees were forced to forego meal periods, have their meal periods

1 interrupted, and/or were otherwise not relieved of all duties during meal periods.

2 35. Defendants did not pay minimum wages for all hours worked by Plaintiff and
3 aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime
4 premium payment, Defendants did not pay at least minimum wages for those hours worked
5 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
6 1198.

7 36. Defendants' failure to pay Plaintiff and aggrieved employees minimum wages
8 violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
9 California Labor Code section 1194.2, Plaintiff and aggrieved employees are entitled to
10 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
11 thereon.

12 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
13 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), AND 1198**

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

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

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

27 40. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
28 the applicable IWC Wage Order(s) also require employers to provide a second meal period of

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

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

14 42. Additionally, during the relevant time period, Defendants had, and continue to
15 have, a uniform practice and/or policy of understaffing their locations which resulted in a lack
16 of adequate meal period coverage, because there were too few employees on duty to handle
17 the heavy workload. Moreover, as stated, Defendants had a practice of failing to schedule
18 meal periods and assigning heavy workloads, which further caused Plaintiff and aggrieved
19 employees to not be relieved of their duties for compliant meal periods. As a result of this
20 lack of meal period coverage, Plaintiff and aggrieved employees were not always afforded 30-
21 minute meal periods during shifts when they were entitled to receive a meal period.
22 Consequently, Plaintiff and aggrieved employees would be forced to work in excess of five
23 (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo
24 their meal periods altogether. For example, approximately once per month, Plaintiff was only
25 provided with his meal period after working in excess of five (5) hours due to his heavy
26 workload, and Defendants' supervisors interrupted Plaintiff's and aggrieved employees' meal
27 periods once per week to discuss work-related matters. Plaintiff and aggrieved employees did
28 not sign valid meal period waivers on days that they were entitled to meal periods and were

1 not relieved of all duties.

2 43. At all times herein mentioned, Defendants knew or should have known that, as
3 a result of their company-wide policies and/or practices, Plaintiff and aggrieved employees
4 were not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants
5 further knew or should have known that they did not pay Plaintiff and aggrieved employees
6 meal period premiums when meal periods were missed, late, short, and/or interrupted.

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

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

19 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

20 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 1198**

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

23 47. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
24 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and
25 aggrieved employees' employment by Defendants.

26 48. At all relevant times, the applicable IWC Wage Order(s) provides that "[e]very
27 employer shall authorize and permit all employees to take rest periods, which insofar as
28 practicable shall be in the middle of each work period" and that the "rest period time shall be

1 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
2 hours or major fraction thereof” unless the total daily work time is less than three and one-half
3 (3 ½) hours.

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

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

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

1 maintained control over Plaintiff and aggrieved employees during rest periods.

2 52. As a result of Defendants' practices and policies, Plaintiff and aggrieved
3 employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10
4 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled.
5 For example, Plaintiff missed his rest periods 2-3 times per week in order to complete the
6 work-related duties Defendants assigned to him.

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

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

17 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
18 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

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

26 57. At all relevant times, Defendants have knowingly and intentionally provided
27 Plaintiff and Subaggrieved employees with uniform, incomplete, and inaccurate wage
28 statements. For example, Defendants issued uniform wage statements to Plaintiff and

1 Subaggrieved employees that fail to correctly list: gross wages earned; total hours worked; net
2 wages earned; the name and address of the legal entity that is the employer; and all applicable
3 hourly rates in effect during the pay period, including overtime rates of pay, and the
4 corresponding number of hours worked at each hourly rate. Specifically, Defendants violated
5 sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

15 59. Additionally, and separate from these violations, Defendants issued uniform
16 wage statements to Plaintiff and Subaggrieved employees that failed to correctly list the name
17 and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose
18 of section 226(a)(8) is to provide California employees with transparency as to the true
19 identity of their employer, to allow the employee to contact their employer during
20 employment in the future for various reasons, including filing an administrative claim, judicial
21 claim, or other action to seek relief against their employer, to obtain unemployment benefits,
22 etc. Plaintiff's and Subaggrieved employees' wage statements incorrectly list the entity
23 "WAWONA ORCHARDS" at the address "1265 N Minnewawa Ave. Clovis, CA 93811,"
24 but, according to the California Secretary of State's website, there is no such entity by that
25 name at that address.

26 60. The wage statement deficiencies also include, without limitation, failing to list
27 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
28 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and

1 only the last four digits of his or her social security number or an employee identification
2 number other than a social security number; failing to list the inclusive dates of the period for
3 which employees were paid; and/or failing to state all hours worked as a result of not
4 recording or stating hours worked off-the-clock.

5 61. 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
7 set 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
10 Wage Order(s), employers are required to keep accurate time records showing when the
11 employee begins and ends each work period and meal period. During the relevant time
12 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
13 and meal period start and stop times for Plaintiff and Subaggrieved employees, in violation of
14 section 1198.

15 62. 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 Subaggrieved
23 employees showing the daily hours they worked and the wages paid thereto as a result of
24 failing to record the off-the-clock hours that they worked.

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

FAILURE TO PAY WAGES UPON TERMINATION
VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203

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

65. At all times relevant herein set forth, Labor Code sections 201 and 202 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.

66. On information and belief, Defendants have a company-wide practice or policy of not paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Plaintiff was terminated in person on or about October 15, 2020, but did not receive his final wages until a week after his termination.

67. Additionally, Defendants willfully failed to pay Plaintiff and aggrieved employees who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

68. Defendants' failure to pay Plaintiff and aggrieved employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and aggrieved employees are therefore entitled to recover from Defendants the 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.

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

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

70. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums that were not timely paid to Plaintiff and aggrieved employees during their employment.

71. 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.

72. 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.

73. 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.

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

75. Defendants' failure to pay Plaintiff and aggrieved employees all wages due violates Labor Code section 204. Plaintiff and aggrieved employees are therefore entitled to

1 recover from Defendants the statutory penalty wages pursuant to California Labor Code
2 section 210.

3 **UNPAID BUSINESS-RELATED EXPENSES**

4 **VIOLATION OF CALIFORNIA LABOR CODE § 2802**

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

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

17 78. Defendants had and continue to have, a company-wide policy of requiring
18 Plaintiff and aggrieved employees to travel in their own personal vehicles to drive to other
19 work locations, but failed to reimburse them for all costs of travel, including mileage. For
20 example, when Plaintiff and aggrieved employees completed their assigned tasks in one field,
21 they were instructed to drive their own vehicles up to four (4) miles each way to Defendants'
22 other fields to complete additional work. Although Defendants required Plaintiff and
23 aggrieved employees to utilize their own personal vehicles to complete these work-related
24 duties, Defendants never reimbursed them for all of their travel expenses.

25 79. In addition, Defendants, on a company-wide basis, required Plaintiff and
26 aggrieved employees to purchase basic tools that were necessary for the completion of
27 assigned tasks. For example, Plaintiff spent \$67.00 on scissors and pruners that were needed
28 to prune branches and harvest fruit. Defendants failed to provide these basic tools to Plaintiff

1 and aggrieved employees, forcing them to procure their own, and failed to reimburse Plaintiff
2 and aggrieved employees for the costs of these tools.

3 80. Defendants could have provided Plaintiff and aggrieved employees with the
4 actual tools for use on the job, such as company vehicles and basic tools, or could have
5 reimbursed employees for their mileage, travel, and basic tool expenses. Instead, Defendants
6 passed these operating costs off onto Plaintiff and aggrieved employees. At all relevant times,
7 Plaintiff did not earn at least two (2) times the minimum wage.

8 81. Defendants' company-wide policy and/or practice of passing on their operating
9 costs to Plaintiff and aggrieved employees violates California Labor Code section 2802.
10 Defendants have intentionally and willfully failed to reimburse Plaintiff and other aggrieved
11 employees for necessary business-related expenses and costs.

12 82. Plaintiff and aggrieved employees are entitled to recover from Defendants their
13 business-related expenses incurred during the course and scope of their employment, plus
14 interest.

15 **REQUEST FOR JURY TRIAL**

16 Plaintiff requests a trial by jury.

17 **PRAYER FOR RELIEF**

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

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

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

24 2. That the Court declare, adjudge and decree that Defendants violated the
25 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
26 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
27 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
28 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and

1 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
2 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
3 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
4 employment); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to
5 provide written notice of information material to employment);

6 3. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
7 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
8 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
9 1197.1, 1198, 2802, and 2810.5;

10 4. For attorneys' fees and costs pursuant to California Labor Code section
11 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
12 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
13 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

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

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

17 Dated: October 1, 2021

Respectfully submitted,

Capstone Law APC

20 By:



21 Mark A. Ozzello

22 Brandon K. Brouillette

23 Joseph Hakakian

24 Attorneys for Plaintiff Carlos Vidales Rodriguez

EXHIBIT 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

May 3, 2021

VIA ONLINE SUBMISSION

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

Subject: *Carlos Vidales Rodriguez v. Wawona Frozen Foods*

Dear PAGA Administrator:

This office represents Carlos Vidales Rodriguez in connection with his claims under the California Labor Code. Mr. Vidales Rodriguez was an employee of WAWONA FROZEN FOODS ("WAWONA").

The employer may be contacted directly at the address below:

WAWONA FROZEN FOODS
100 W ALLUVIAL AVE
CLOVIS CA 93611

Mr. Vidales Rodriguez 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. Vidales Rodriguez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by WAWONA as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

WAWONA employed Mr. Vidales Rodriguez as an hourly paid, non-exempt General Laborer from approximately July 2020 to October 2020. Mr. Vidales Rodriguez worked for WAWONA at its location in Clovis, California. During his employment, Mr. Vidales Rodriguez typically worked nine (9) hours or more per day, Monday through Friday, and five (5) hours or more per day on Saturdays. At the time Mr. Vidales Rodriguez's employment with WAWONA ended, he earned approximately \$13.00 per hour. His job duties included, without limitation, trimming trees and picking fruit.

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

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

WAWONA FROZEN FOODS is a California corporation and specializes in the growing and freezing of fresh fruit, and supplying the retail, club store, foodservice, school, and food ingredient industries with their fruit products. Upon information and belief, WAWONA maintains a single, centralized Human Resources (HR) department at its company headquarters in Clovis, California, for all non-exempt, hourly paid employees working for WAWONA in California, including Mr. Vidales Rodriguez and other aggrieved employees. At all relevant times, WAWONA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Vidales Rodriguez and other aggrieved employees, regardless of its location or position.

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

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

California Labor Code section 510 requires employers to pay employees at the overtime rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order(s) 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 13-2001 provides that employers are required to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate

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

of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. IWC Wage Order 13-2001 further provides that employers are required to pay employees working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. Additionally, 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.

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

First, during the relevant period, WAWONA had a company-wide policy and/or practice of failing to accurately record hours worked by its employees and thus restricted overtime accrual. WAWONA did not provide employees with any mechanism, such as a handwritten timesheet, time clock, or electronic timekeeping system, to track and record their hours worked. Instead, WAWONA had its supervisors input all employee time on handwritten timesheets, and thus maintained exclusive control and discretion over employee punch-in and punch-out times. Moreover, on these timesheets, WAWONA's supervisors entered in advance Mr. Vidales Rodriguez's and other aggrieved employees' shift start-times, shift end-times, and meal period start- and end-times with the hours they were scheduled, instead of their actual hours worked. WAWONA required Mr. Vidales Rodriguez and other aggrieved employees to sign these prefilled timesheets every day, around one (1) hour into their shifts.

For example, approximately once or twice per week, WAWONA required Mr. Vidales Rodriguez and other aggrieved employees to report to work 30 minutes early to start their tasks, such as setting up ladders, thinning fruit trees, and picking fruit, before their supervisors clocked them in. As a result, WAWONA did not compensate Mr. Vidales Rodriguez and other aggrieved employees for this time worked before and/or after their scheduled shifts. Because WAWONA failed to provide Mr. Vidales Rodriguez and other aggrieved employees with any mechanism to record their actual hours worked themselves and, instead, granted WAWONA's supervisors exclusive control and discretion over employee time records, Mr. Vidales Rodriguez and other aggrieved employees were not paid for all hours worked.

Second, WAWONA's company-wide timekeeping practices and/or policies did not permit employees, including Mr. Vidales Rodriguez and other aggrieved employees, to accurately track the start and stop times of their meal periods or allow them to report a short, missed, or interrupted meal period. As stated, because WAWONA's supervisors logged the start and stop times of meal periods on timesheets which Mr. Vidales Rodriguez and other aggrieved employees did not have access to, WAWONA, upon information and belief, would record that compliant meal periods were taken, even

if that was not the case. Alternatively, WAWONA implemented a company-wide practice and/or policy of automatically deducting meal periods from Mr. Vidales Rodriguez's and other aggrieved employees' time records. As a result, because WAWONA's supervisors recorded 30-minute meal periods were taken, even when meal periods were short, missed, or interrupted, Mr. Vidales Rodriguez and other aggrieved employees were not paid for all hours worked.

Third, during the relevant time period, WAWONA had, and continues to have, a uniform practice and/or policy of understaffing its locations which resulted in a lack of adequate meal period coverage, because there were too few employees on duty to handle the heavy workload. Specifically, Mr. Vidales Rodriguez and other aggrieved employees were required to thin at least 26 trees per shift, and on days when they assigned to pick fruit, they were expected to fill at least four (4) vans per day. On information and belief, WAWONA also had a practice of failing to schedule meal periods, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. Moreover, Mr. Vidales Rodriguez and other aggrieved employees would be required to discuss work-related matters with supervisors and management during unpaid meal periods. For example, Mr. Vidales Rodriguez's and other aggrieved employees' meal periods were interrupted once per week by their supervisors to discuss work-related issues, such as proper thinning techniques. As a result, Mr. Vidales Rodriguez 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. WAWONA did not pay Mr. Vidales Rodriguez and other aggrieved employees for the time they continued to perform tasks during meal periods.

WAWONA knew or should have known that as a result of these company-wide practices and/or policies, Mr. Vidales Rodriguez 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. Vidales Rodriguez and other aggrieved employees 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. Vidales Rodriguez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

WAWONA's failure to pay Mr. Vidales Rodriguez 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. Vidales Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in the applicable IWC Wage Order(s) 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.”

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

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

Accordingly, WAWONA regularly failed to pay at least minimum wages to Mr. Vidales Rodriguez 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. Vidales Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order(s) 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(s), 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(s) also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee’s regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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

As also stated above, WAWONA had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads and failing to schedule meal periods, which resulted in a lack of meal period coverage and prevented Mr. Vidales Rodriguez and/or other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Consequently, Mr. Vidales Rodriguez 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, approximately once per month, Mr. Vidales Rodriguez was only provided with his meal period after working in excess of five (5) hours due to his heavy workload, and WAWONA's supervisors interrupted Mr. Vidales Rodriguez's and other aggrieved employees' meal periods once per week to discuss work-related matters.

Additionally, WAWONA did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Vidales Rodriguez 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.

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

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

Accordingly, WAWONA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Vidales Rodriguez 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(s) require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

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

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

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

As a result of WAWONA's practices and policies, Mr. Vidales Rodriguez 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. Vidales Rodriguez missed his rest periods 2-3 times per week in order to complete the work-related duties WAWONA assigned to him.

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

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

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

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

During the relevant time period, WAWONA has knowingly and intentionally provided Mr. Vidales Rodriguez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, WAWONA issued uniform wage statements to Mr. Vidales Rodriguez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, WAWONA violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because WAWONA did not record the time Mr. Vidales Rodriguez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), WAWONA did not list the correct amount of gross wages and net wages earned by Mr. Vidales Rodriguez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, WAWONA failed to accurately list the total number of hours worked by Mr. Vidales Rodriguez 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).

Second, because WAWONA did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, WAWONA did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, WAWONA also failed to list the correct amount of net wages in violation of section 226(a)(5). WAWONA also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay, in violation of section 226(a)(9).

Third, and separate from these violations, WAWONA issued uniform wage statements to Mr. Vidales Rodriguez and other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is

to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Vidales Rodriguez's and other aggrieved employees' wage statements incorrectly list the entity "WAWONA ORCHARDS" at the address "1265 N Minnewawa Ave. Clovis, CA 93811," but, according to the California Secretary of State's website, there is no such entity by that name at that address.

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; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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

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

Because WAWONA failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Vidales Rodriguez 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. Vidales Rodriguez 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. Vidales Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

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

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

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

Mr. Vidales Rodriguez 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.

On information and belief, WAWONA has a company-wide practice or policy of not paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Vidales Rodriguez was terminated in person on or about October 15, 2020, but did not receive his final wages until a week after his termination.

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

Mr. Vidales Rodriguez 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."

WAWONA had and continues to have, a company-wide policy of requiring Mr. Vidales Rodriguez and other aggrieved employees to travel in their own personal vehicles to drive to other work locations, but failed to reimburse them for all costs of travel, including mileage. For example, when Mr. Vidales Rodriguez and other aggrieved employees completed their assigned tasks in one field, they were instructed to drive their own vehicles up to four (4) miles each way to WAWONA's other fields to complete additional work. Although WAWONA required Mr. Vidales Rodriguez and other aggrieved employees to utilize their own personal vehicles to complete these work-related duties, WAWONA never reimbursed them for all of their travel expenses.

In addition, WAWONA, on a company-wide basis, required Mr. Vidales Rodriguez and other aggrieved employees to purchase basic tools that were necessary for the completion of assigned tasks. For example, Mr. Vidales Rodriguez spent \$67.00 on scissors and pruners that were needed to prune branches and harvest fruit. WAWONA failed to provide these basic tools to Mr. Vidales Rodriguez and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Vidales Rodriguez and other aggrieved employees for the costs of these tools.

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

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

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

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure

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

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

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

California Labor Code § 558(a)

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

Accordingly, Mr. Vidales Rodriguez 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. Vidales Rodriguez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against WAWONA for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Vidales Rodriguez 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,

A handwritten signature in black ink, appearing to read "Anty Caste", written in a cursive style.

Anthony Castillo

Copy: WAWONA FROZEN FOODS (via U.S. Certified Mail)

EXHIBIT 2

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

June 9, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/310>)

Subject: *Carlos Vidales Rodriguez v. Wawona Frozen Foods, et al.*
LWDA Case No. LWDA-CM-831031-21 – AMENDED NOTICE

Dear PAGA Administrator:

This office represents Carlos Vidales Rodriguez in connection with his claims under the California Labor Code. Mr. Vidales Rodriguez was an employee of WAWONA FROZEN FOODS; CLOVIS FOOD PRODUCTS, INC.; and/or CLOVIS FOOD PRODUCTS DBA WAWONA ORCHARDS. For the purpose of this letter, Mr. Vidales Rodriguez collectively refers to these entities as “WAWONA.” We previously provided notice of Mr. Vidales Rodriguez’s claims to the California Labor and Workforce Development Agency (“LWDA”) on May 3, 2021, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplement Mr. Vidales Rodriguez’s prior LWDA notice and names additional employers, CLOVIS FOOD PRODUCTS, INC. and CLOVIS FOOD PRODUCTS DBA WAWONA ORCHARDS, which share the same registered address as WAWONA FROZEN FOODS.

The employers may be contacted directly at the addresses below:

WAWONA FROZEN FOODS
100 W ALLUVIAL AVE
CLOVIS CA 93611

CLOVIS FOOD PRODUCTS DBA
WAWONA ORCHARDS
100 W. ALLUVIAL AVE.
CLOVIS CA 93612

CLOVIS FOOD PRODUCTS, INC.
100 W. ALLUVIAL
CLOVIS CA 93612

Mr. Vidales Rodriguez 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. Vidales Rodriguez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by WAWONA as a non-exempt, hourly paid employee in California and who received at least one wage

statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

WAWONA employed Mr. Vidales Rodriguez as an hourly paid, non-exempt General Laborer from approximately July 2020 to October 2020. Mr. Vidales Rodriguez worked for WAWONA at its location in Clovis, California. During his employment, Mr. Vidales Rodriguez typically worked nine (9) hours or more per day, Monday through Friday, and five (5) hours or more per day on Saturdays. At the time Mr. Vidales Rodriguez’s employment with WAWONA ended, he earned approximately \$13.00 per hour. His job duties included, without limitation, trimming trees and picking fruit.

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

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

WAWONA FROZEN FOODS and CLOVIS FOOD PRODUCTS, INC. are California corporations, and CLOVIS FOOD PRODUCTS DBA WAWONA ORCHARDS is an unknown business entity. Together, they specialize in the growing and freezing of fresh fruit, and supplying the retail, club store, foodservice, school, and food ingredient industries with their fruit products. Upon information and belief, WAWONA maintains a single, centralized Human Resources (HR) department at its company headquarters in Clovis, California, for all non-exempt, hourly paid employees working for WAWONA in California, including Mr. Vidales Rodriguez and other aggrieved employees. At all relevant times, WAWONA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Vidales Rodriguez and other aggrieved employees, regardless of its location or position.

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

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

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 Industrial Welfare Commission ("IWC") Wage Order(s) 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 No. 13-2001 provides that employers are required to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. IWC Wage Order No. 13-2001 further provides that employers are required to pay employees working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. Additionally, IWC Wage Order No. 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 No. 14-2001 further provides that, starting January 1, 2021, employers are and were required to pay employees working more than eight and one-half (8 ½) hours in a day or more than forty-five (45) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight and one-half (8 ½) hours in a day or more than forty-five (45) hours in a workweek. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

First, during the relevant period, WAWONA had a company-wide policy and/or practice of failing to accurately record hours worked by its employees and thus restricted overtime accrual. WAWONA did not provide employees with any mechanism, such as a handwritten timesheet, time clock, or electronic timekeeping system, to track and record their hours worked. Instead, WAWONA had its supervisors input all employee time on handwritten timesheets, and thus maintained exclusive control and discretion over employee punch-in and punch-out times. Moreover, on these timesheets, WAWONA's supervisors entered in advance Mr. Vidales Rodriguez's and other aggrieved employees' shift start-times, shift end-times, and meal period start- and end-times with the hours they were scheduled, instead of their actual hours worked. WAWONA required Mr. Vidales Rodriguez and other aggrieved employees to sign these prefilled timesheets every day, around one (1) hour into their shifts.

For example, approximately once or twice per week, WAWONA required Mr. Vidales Rodriguez and other aggrieved employees to report to work 30 minutes early to start their tasks, such as setting

up ladders, thinning fruit trees, and picking fruit, before their supervisors clocked them in. As a result, WAWONA did not compensate Mr. Vidales Rodriguez and other aggrieved employees for this time worked before and/or after their scheduled shifts. Because WAWONA failed to provide Mr. Vidales Rodriguez and other aggrieved employees with any mechanism to record their actual hours worked themselves and, instead, granted WAWONA's supervisors exclusive control and discretion over employee time records, Mr. Vidales Rodriguez and other aggrieved employees were not paid for all hours worked.

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

Third, during the relevant time period, WAWONA had, and continues to have, a uniform practice and/or policy of understaffing its locations which resulted in a lack of adequate meal period coverage, because there were too few employees on duty to handle the heavy workload. Specifically, Mr. Vidales Rodriguez and other aggrieved employees were required to thin at least 26 trees per shift, and on days when they assigned to pick fruit, they were expected to fill at least four (4) vans per day. On information and belief, WAWONA also had a practice of failing to schedule meal periods, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. Moreover, Mr. Vidales Rodriguez and other aggrieved employees would be required to discuss work-related matters with supervisors and management during unpaid meal periods. For example, Mr. Vidales Rodriguez's and other aggrieved employees' meal periods were interrupted once per week by their supervisors to discuss work-related issues, such as proper thinning techniques. As a result, Mr. Vidales Rodriguez 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. WAWONA did not pay Mr. Vidales Rodriguez and other aggrieved employees for the time they continued to perform tasks during meal periods.

WAWONA knew or should have known that as a result of these company-wide practices and/or policies, Mr. Vidales Rodriguez 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. Vidales Rodriguez and other aggrieved employees 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. Vidales Rodriguez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, WAWONA failed to pay all overtime wages by paying a lower overtime rate than required.

WAWONA's failure to pay Mr. Vidales Rodriguez 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. Vidales Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in the applicable IWC Wage Order(s) 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."

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

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

Accordingly, WAWONA regularly failed to pay at least minimum wages to Mr. Vidales Rodriguez 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. Vidales Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order(s) 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(s), 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(s) also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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

As also stated above, WAWONA had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads and failing to schedule meal periods, which resulted in a lack of meal period coverage and prevented Mr. Vidales Rodriguez and/or other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Consequently, Mr. Vidales Rodriguez 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, approximately once per month, Mr. Vidales Rodriguez was only provided with his meal period after working in excess of five (5) hours due to his heavy workload, and WAWONA's supervisors interrupted Mr. Vidales Rodriguez's and other aggrieved employees' meal periods once per week to discuss work-related matters.

Additionally, WAWONA did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Vidales Rodriguez 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.

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

Furthermore, WAWONA engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Vidales Rodriguez and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that WAWONA did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, WAWONA

did not pay other aggrieved employees at the correct rate of pay for premiums because WAWONA systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, WAWONA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Vidales Rodriguez 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, and 1198 and the applicable IWC Wage Order(s) 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(s) provide 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(s), an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

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

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

As a result of WAWONA's practices and policies, Mr. Vidales Rodriguez 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. Vidales Rodriguez missed his rest periods 2-3 times per week in order to complete the work-related duties WAWONA assigned to him.

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

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

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

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

During the relevant time period, WAWONA has knowingly and intentionally provided Mr. Vidales Rodriguez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, WAWONA issued uniform wage statements to Mr. Vidales Rodriguez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, WAWONA violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because WAWONA did not record the time Mr. Vidales Rodriguez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), WAWONA did not list the correct amount of gross wages and net wages earned by Mr. Vidales Rodriguez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, WAWONA failed to accurately list the total number of hours worked by Mr. Vidales Rodriguez 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).

Second, because WAWONA did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, WAWONA did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, WAWONA also failed to list the correct amount of net wages in violation of section 226(a)(5). WAWONA also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay, in violation of section 226(a)(9).

Third, and separate from these violations, WAWONA issued uniform wage statements to Mr. Vidales Rodriguez and other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Vidales Rodriguez's and other aggrieved employees' wage statements incorrectly list the entity "WAWONA ORCHARDS" at the address "1265 N Minnewawa Ave. Clovis, CA 93811," but, according to the California Secretary of State's website, there is no such entity by that name at that address.

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; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order(s). 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(s), employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, WAWONA failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Vidales Rodriguez and other aggrieved employees, in violation of section 1198. Furthermore, in light of WAWONA's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, WAWONA kept no records of meal start and end times for second meal periods.

Because WAWONA failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Vidales Rodriguez 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. Vidales Rodriguez 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. Vidales Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

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

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

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

Mr. Vidales Rodriguez 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.

On information and belief, WAWONA has a company-wide practice or policy of not paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Vidales Rodriguez

was terminated in person on or about October 15, 2020, but did not receive his final wages until a week after his termination.

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

Mr. Vidales Rodriguez 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 IWC Wage Order(s) provide 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."

WAWONA had and continues to have, a company-wide policy of requiring Mr. Vidales Rodriguez and other aggrieved employees to travel in their own personal vehicles to drive to other work locations, but failed to reimburse them for all costs of travel, including mileage. For example, when Mr. Vidales Rodriguez and other aggrieved employees completed their assigned tasks in one field, they were instructed to drive their own vehicles up to four (4) miles each way to WAWONA's other fields to complete additional work. Although WAWONA required Mr. Vidales Rodriguez and other aggrieved employees to utilize their own personal vehicles to complete these work-related duties, WAWONA never reimbursed them for all of their travel expenses.

In addition, WAWONA, on a company-wide basis, required Mr. Vidales Rodriguez and other aggrieved employees to purchase basic tools that were necessary for the completion of assigned tasks. For example, Mr. Vidales Rodriguez spent \$67.00 on scissors and pruners that were needed to prune branches and harvest fruit. WAWONA failed to provide these basic tools to Mr. Vidales Rodriguez and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Vidales Rodriguez and other aggrieved employees for the costs of these tools.

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

Thus, WAWONA had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code

section 2802. Mr. Vidales Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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

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

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

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

California Labor Code § 558(a)

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

Accordingly, Mr. Vidales Rodriguez 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. Vidales Rodriguez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of

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

Therefore, on behalf of all aggrieved employees, Mr. Vidales Rodriguez 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
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Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Anthony Castillo

Copy: WAWONA FROZEN FOODS (via U.S. Certified Mail); CLOVIS FOOD PRODUCTS, INC. (via U.S. Certified Mail); CLOVIS FOOD PRODUCTS DBA WAWONA ORCHARDS (via U.S. Certified Mail)