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Amanda Toste
Clerk of the Superior Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MERCED

AGUSTIN VERA GALLARDO, as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"), on
behalf of the State of California and other
aggrieved employees,

Plaintiff,

vs.

J. MARCHINI & SON, INC., a California
corporation; MINTURN NUT CO., INC. a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 21CV-03068

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

1 Plaintiff Agustin Vera Gallardo, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges 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 sections 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 and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on July 2, 2021, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

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

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

8 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
9 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
10 attorneys general their current or former employers for various civil penalties for violations of
11 various provisions in the California Labor Code.

12 THE PARTIES

6. Plaintiff Agustin Vera Gallardo is a resident of Le Grand, in Merced County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Agricultural Worker from approximately March 30, 2015 to September 9, 2020. Plaintiff worked for Defendants based out of their client location in Le Grand, California. Plaintiff typically worked nine (9) hours or more per day, six (6) days per week. At the time Plaintiff's employment with Defendants ended, he was compensated approximately \$14.75 per hour. His job duties included, without limitation, installing PVC and aluminum piping for irrigation systems, harvesting kale, and cleaning and fixing leaks on water lines.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' dispute resolution policy and/or arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented new hires with a "La Politica Sobre Resoluciones Alternativas De Disputas" and/or "Politica De Resolucion Alternativa de Controversias" (collectively referred to as, "Arbitration Agreement") during the onboarding process, which had to be reviewed and signed immediately. In fact, upon information and

1 belief, this Arbitration Agreement was one of several documents presented to new employees
2 for signature during the orientation process, including the Employee Handbook, among other
3 documents. Also, employees did not have a meaningful opportunity to negotiate the terms of
4 the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to
5 sign on a take-it or leave-it basis, along with all of the other on-boarding documents.
6 Furthermore, Defendants did not set forth in the agreement or otherwise provide employees
7 with the rules which will govern the arbitration, instead forcing employees to seek this
8 information out on their own.

9 8. J. MARCHINI & SON, INC. was and is, upon information and belief, a
10 California corporation, and at all times hereinafter mentioned, an employer whose employees
11 are engaged throughout this county and the State of California.

12 9. MINTURN NUT CO., INC. was and is, upon information and belief, a
13 California corporation, and at all times hereinafter mentioned, an employer whose employees
14 are engaged throughout this county and the State of California.

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

19 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
20 were the partners, agents, owners, or managers of J. MARCHINI & SON, INC. and/or
21 MINTURN NUT CO., INC. (collectively, "MARCHINI") at all relevant times.

22 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
23 acts and omissions alleged herein was performed by, or is attributable to, J. MARCHINI &
24 SON, INC.; MINTURN NUT CO., INC.; and/or DOES 1 through 10,), each acting as the
25 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
26 other co-Defendants and was acting within the course and scope of such agency, employment,
27 joint venture, or concerted activity with legal authority to act on the others' behalf. The acts
28 of any and all Defendants were in accordance with, and represent, the official policy of

1 Defendants.

2 13. At all relevant times, Defendants, and each of them, ratified each and every act
3 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
4 and abetted the acts and omissions of each and all the other Defendants in proximately causing
5 the damages herein alleged.

6 14. Plaintiff is informed and believes, and thereon alleges, that each of said
7 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
8 omissions, occurrences, and transactions alleged herein.

9 15. Under California law, Defendants are jointly and severally liable as employers
10 for the violations alleged herein because they have each exercised sufficient control over the
11 wages, hours, working conditions, and employment status of Plaintiff and other non-party
12 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
13 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
14 of employment, determined their rate of pay, and maintained their employment records.
15 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
16 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a
17 common-law employment relationship. As joint employers of Plaintiff and other non-party
18 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
19 available to Plaintiff and other non-party Aggrieved Employees under the law.

20 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
21 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
22 non-party Aggrieved Employees because Defendants have:

- 23 (a) jointly exercised meaningful control over the work performed by
24 Plaintiff and other non-party Aggrieved Employees;
25 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
26 Aggrieved Employees’ wages, hours, and working conditions, including
27 the quantity, quality standards, speed, scheduling, and operative details
28 of the tasks performed by Plaintiff and other non-party Aggrieved

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- Employees;
- (c) jointly required that Plaintiff and other non-party Aggrieved Employees perform work which is an integral part of Defendants’ businesses; and
 - (d) jointly exercised control over Plaintiff and other non-party Aggrieved Employees as a matter of economic reality in that Plaintiff and other non-party Aggrieved Employees were dependent on Defendants, who shared the power to set the wages of Plaintiff and other non-party Aggrieved Employees and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

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

18. J. MARCHINI & SON, INC.; MINTURN NUT CO., INC.; and DOES 1 through 10 are therefore alter egos of each other.

19. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them.

20. Plaintiff further alleges, upon information and belief, that Defendants J. MARCHINI & SON, INC. and MINTURN NUT CO., INC. are alter egos of each other for the following reasons:

- (a) On the California Secretary of State’s website (<https://businesssearch.sos.ca.gov/>), J. MARCHINI & SON, INC. and MINTURN NUT CO., INC. share one or more officers, including, but not limited to Joseph Marchini as President and/or Director; and
- (b) On information and belief, J. MARCHINI & SON, INC. and MINTURN NUT CO., INC. utilize the same standardized employment

forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

21. Defendants are the leading growers, packers and shippers of produce and almonds. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in Le Grand, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

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

23. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Le Grand, California, which processes payroll for all non-exempt employees working for Defendants at their various locations and jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee’s employment ends.

24. Defendants continue to employ non-exempt employees in California.

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

1 26. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
2 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
3 were not recorded.

4 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 receive certain wages for overtime compensation and that they were not receiving certain wages
7 for overtime compensation.

8 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that other non-party Aggrieved Employees were entitled to be paid at a
10 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income all
11 income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
12 compensation, but failed to incorporate all forms of remuneration in calculating the regular rate
13 of pay for other non-party Aggrieved Employees.

14 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 receive at least minimum wages for compensation and that they were not receiving at least
17 minimum wages for work that was required to be done off-the-clock. In violation of the
18 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
19 least minimum wages for work done off-the-clock.

20 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 meal periods in accordance with the California Labor Code and applicable IWC Wage Order or
23 payment of one (1) additional hour of pay at their regular rates of pay when they were not
24 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other
25 non-party Aggrieved Employees were not provided with all meal periods or payment of one (1)
26 additional hour of pay at their regular rates of pay when they did not receive a timely,
27 uninterrupted, thirty (30) minute meal period.

28 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest
2 periods in accordance with the California Labor Code and applicable IWC Wage Order or
3 payment of one (1) additional hour of pay at their regular rates of pay when they were not
4 authorized and permitted to take a compliant rest period. In violation of the California Labor
5 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to
6 take compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
7 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
8 they were not authorized and permitted to take a compliant rest period.

9 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
11 receive heat recovery periods in accordance with California law. In violation of the California
12 Labor Code, Plaintiff and other non-party Aggrieved Employees were not provided heat
13 recovery periods or heat recovery period premiums for all missed heat recovery periods.

14 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 receive complete and accurate wage statements in accordance with California law. In violation
17 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
18 provided complete and accurate wage statements.

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

23 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 timely payment of all wages earned upon termination of employment. In violation of the
26 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
27 payment of all wages due, including, but not limited to, overtime wages; minimum wages; meal,
28 rest, and recovery period premiums; and/or reporting time pay within permissible time periods.

1 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 timely payment of wages during their employment. In violation of the California Labor Code,
4 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
5 including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period
6 premiums; and/or reporting time pay within permissible time periods.

7 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to one
9 day’s rest in seven. In violation of the California Labor Code, Defendants required Plaintiff and
10 other non-party Aggrieved Employees to work more than six consecutive days without a day of
11 rest, where the total hours worked exceeded 30 hours in any week or six hours in any one day
12 thereof.

13 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to be
15 paid reporting time pay when they reported to work for their scheduled shift but were put to
16 work for less than half of the regular schedule. In violation of the California Labor Code and
17 applicable IWC Wage Order, Defendants did not pay Plaintiff and other non-party Aggrieved
18 Employees all reporting time pay due.

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

24 40. 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 Plaintiff
26 and other non-party Aggrieved Employees for all hours worked, and that Defendants had the
27 financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to
28 do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they

1 were properly denied wages, all in order to increase Defendants’ profits.

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

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

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

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

17 (a) The aggrieved employee shall give written notice by online filing
18 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to
19 the employer of the specific provisions of the California Labor Code
20 alleged to have been violated, including the facts and theories to support
21 the alleged violations.

22 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
23 2699.3(a) and any employer response to that notice shall be accompanied
24 by a filing fee of seventy-five dollars (\$75).

25 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
26 employer and the aggrieved employee by certified mail that it does not
27 intend to investigate the alleged violation within sixty (60) calendar days
28 of the postmark date of the Employee’s Notice. Upon receipt of the

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LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

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

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

46. On July 2, 2021, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff’s written notice was

1 accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA
2 Administrator has confirmed receipt of Plaintiff’s written notice and assigned Plaintiff PAGA
3 Case Number LWDA-CM-836813-21. A true and correct copy of Plaintiff’s written notice to
4 the LWDA and Defendants dated July 2, 2021, is attached hereto as “Exhibit 1.”

5 47. As of the filing date of this complaint, over 65 days have passed since Plaintiff
6 sent the LWDA Notice described above, and the LWDA has not responded that it intends to
7 investigate Plaintiff’s claims, and Defendants have not cured the violations.

8 48. Thus, Plaintiff has satisfied the administrative prerequisites under California
9 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
10 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
11 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

12 49. Labor Code section 558(a) provides “[a]ny employer or other person acting on
13 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare Commission
15 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
16 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
17 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
18 each pay period for which the employee was underpaid. . . .” Labor Code section 558(c)
19 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
20 criminal penalty provided by law.” Plaintiff, acting in the public interest as a private attorney
21 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
22 himself, all other non-party Aggrieved Employees, and the State of California against
23 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
24 IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not
25 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for
26 violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order.

27 50. Defendants, at all times relevant to this complaint, were employers or persons
28 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved

Employees’ rights by violating various sections of the California Labor Code as set forth above.

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

52. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

**For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.*
(Against all Defendants)**

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

54. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

55. Defendants’ conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay and failure to properly calculate the overtime rates paid to other non-party

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- Aggrieved Employees, as set forth below;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked as set forth below;
 - (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants’ failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth below;
 - (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants’ failure to authorize and permit Plaintiff and other non-party Aggrieved Employees to take rest periods, as set forth below;
 - (e) Violation of Labor Code sections 226.7, 516, and 1198 for failure to provide heat recovery periods to Plaintiff and other non-party Aggrieved Employees, as set forth below;
 - (f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;
 - (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;
 - (h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as set forth below;
 - (i) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below;
 - (j) Violation of Labor Code sections 551 and 552 for failure to provide one

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- day’s rest in seven to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (k) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay reporting time pay when Plaintiff and other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below; and
- (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

56. California Labor Code section 510 codifies the right to overtime compensation at one and one-half (1 1/2) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

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

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

59. Specifically, the applicable IWC Wage Order provides that effective January 1, 2020, Defendants were required to pay Plaintiff and other non-party Aggrieved Employees,

1 working more than nine (9) hours in a day or more than fifty (50) hours in a workweek, at the
2 rate of time and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
3 nine (9) hours in a day or more than fifty (50) hours in a workweek.

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

11 61. Defendants willfully failed to pay all overtime wages owed to Plaintiff and
12 other non-party Aggrieved Employees. During the relevant time period, Plaintiff and other
13 non-party Aggrieved Employees were not paid overtime premiums for all of the hours they
14 worked in excess of the applicable maximum hours in a day and/or in excess of the applicable
15 maximum hours in a week, because all hours that they worked were not recorded.

16 62. First, during the relevant period, Defendants had a company-wide policy and/or
17 practice of improperly rounding employees' clock-in and clock-out duration times in their
18 timekeeping system to the nearest half (0.50) of an hour. Defendants' rounding policy
19 resulted in the failure to compensate Plaintiff and other non-party Aggrieved Employees fully
20 for all hours worked, causing Plaintiff and other non-party Aggrieved Employees to not be
21 paid overtime wages for all of the overtime hours they actually worked. Defendants' policy of
22 rounding was unfair and has, over time, resulted in the underpayment of wages to Plaintiff and
23 other non-party Aggrieved Employees. To the extent Defendants' rounding policy has taken
24 away time worked that was eligible for overtime, Plaintiff and other non-party Aggrieved
25 Employees were denied overtime pay for all hours worked.

26 63. Second, Defendants had a company-wide practice and/or policy of failing to
27 accurately record all hours worked by its employees and thus restricted overtime accrual.
28 Defendants did not provide employees with an appropriate timekeeping mechanism, such as a

1 time clock or electronic timekeeping system, to accurately track and record their hours
2 worked. Instead, Defendants required Plaintiff and non-party Aggrieved Employees to record
3 their time on handwritten timesheets which were subsequently and frequently interlineated,
4 altered and/or falsified by Defendants' supervisors. Essentially, Defendants' supervisors
5 maintained control and/or discretion over Plaintiff's and non-party Aggrieved Employees'
6 clock-in and clock-out times reported on their handwritten timesheets, and the times recorded
7 would be their scheduled shifts, instead of their actual hours worked. Thus, Defendants failed
8 to track all hours Plaintiff and other non-party Aggrieved Employees spent working before
9 clocking in and/or after clocking out, and Plaintiff and other non-party Aggrieved Employees
10 received no compensation for this time.

11 64. Moreover, Defendants had and continue to have, a company-wide policy of
12 discouraging and impeding Plaintiff and other non-party Aggrieved Employees from
13 recording hours worked outside of their scheduled shifts while simultaneously understaffing
14 their locations and assigning Plaintiff and other non-party Aggrieved Employees heavy
15 workloads. Defendants expected Plaintiff and other non-party Aggrieved Employees to
16 complete all of their assigned tasks within their scheduled shifts, which further led Plaintiff
17 and other non-party Aggrieved Employees to perform work outside of their scheduled shifts.
18 Defendants' policies and/or practices of limiting overtime and the recording of hours worked
19 outside of scheduled shifts, coupled with Defendants' assignment of heavy workloads, led
20 Plaintiff and other non-party Aggrieved Employees to work off-the-clock before and after
21 their scheduled shift times. For example, Plaintiff was forced to spend approximately 20
22 minutes prior to clocking in for his scheduled shift preparing and organizing water lines. As a
23 further example, Plaintiff would spend approximately 30 minutes after his scheduled shift had
24 ended each day during harvesting season, and at least twice per month during the remaining
25 seasons, preparing and organizing water lines for the next day due to the heavy workload and
26 lack of coverage. Plaintiff would get reprimanded and threatened with termination by
27 Defendants' supervisors if he reported this off-the-clock work. Defendants did not
28 compensate Plaintiff and other non-party Aggrieved Employees for the time they worked

1 before and after their scheduled shifts. At all times, Plaintiff and other non-party Aggrieved
2 Employees remained under the control of Defendants. Defendants could have recorded this
3 off-the-clock work, but refused to do so to avoid paying Plaintiff and other non-party
4 Aggrieved Employees overtime wages.

5 65. Third, during the relevant time period, Defendants maintained and implemented
6 a company-wide on-premises meal period policy, which mandated that Plaintiff and other
7 non-party Aggrieved Employees remain on the work premises during their meal periods.
8 Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving the
9 premises during meal periods, they were denied the ability to use their meal periods freely for
10 their own purposes, such as running personal errands. Thus, Defendants effectively
11 maintained control over Plaintiff and other non-party Aggrieved Employees during meal
12 periods.

13 66. Fourth, Defendants' company-wide policy and/or practice of understaffing their
14 locations while assigning heavy workloads resulted in a failure to provide Plaintiff and/or
15 other non-party Aggrieved Employees with adequate meal period coverage. Defendants also
16 failed to adhere to a schedule of meal periods, which further caused Plaintiff and/or other non-
17 party Aggrieved Employees to not be relieved of their duties for compliant meal periods. As a
18 result, other non-party Aggrieved Employees missed or had meal periods interrupted in order
19 to complete their assigned tasks. Consequently, other non-party Aggrieved Employees
20 performed work during meal periods for which they were not paid.

21 67. Defendants knew or should have known that as a result of these company-wide
22 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were working
23 before and after their shifts and/or during their meal periods, and were suffered or permitted to
24 perform work for which they were not paid. Because Plaintiff and other non-party Aggrieved
25 Employees regularly worked shifts of the applicable maximum hours in a day and/or the
26 applicable maximum hours in a week, some of this off-the-clock work qualified for overtime
27 premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid
28 overtime wages for all of the overtime hours they actually worked.

1 68. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
2 correct overtime rate for the recorded overtime hours that they generated. In addition to an
3 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
4 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
5 California Labor Code, Defendants failed to incorporate all compensation, including incentive
6 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
7 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
8 times when other non-party Aggrieved Employees worked overtime and received these other
9 forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate
10 than required.

11 69. Defendants’ failure to pay Plaintiff and other non-party Aggrieved Employees
12 the balance of overtime compensation as required by California law, violates the provisions of
13 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
14 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
15 2699(a), (f), and (g).

16 **FAILURE TO PAY MINIMUM WAGES**

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

18 70. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
19 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
20 to be paid to employees, and the payment of a wage less than the minimum so fixed is
21 unlawful. Compensable work time is defined in IWC Wage Order No. 14-2001 as “the time
22 during which an employee is subject to the control of an employer, and includes all the time
23 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
24 Regs. tit. 8, § 11140(2)(G) (defining “Hours Worked”).

25 71. As set forth above, during the relevant time period, due to Defendants’ policy
26 of rounding Plaintiff and other non-party Aggrieved Employees’ clock-in and clock-out times
27 to the half (0.5) hour, Defendants failed to compensate Plaintiff and other non-party
28 Aggrieved Employees fully for all hours worked. As also set forth above, Defendants failed

1 to provide Plaintiff and other non-party Aggrieved Employees with an appropriate
2 timekeeping mechanism, such as a time clock or electronic timekeeping system, to accurately
3 track and record their hours worked. Instead, Defendants maintained a policy and/or practice
4 of altering and/or falsifying employee handwritten timesheets to reflect scheduled hours rather
5 than hours actually worked, thereby shorting Plaintiff and other non-party Aggrieved
6 Employees for work performed outside their scheduled shifts.

7 72. Further, as stated above, Defendant had a company-wide policy and/or practice
8 of assigning Plaintiff and other non-party Aggrieved Employees heavy workloads with the
9 expectation that they complete all of their assigned tasks within their scheduled shifts, which
10 further led Plaintiff and other non-party Aggrieved Employees to perform work outside their
11 scheduled shifts. Moreover, due to Defendants' policies and/or practices of understaffing
12 while assigning of heavy workloads, failing to schedule meal periods, and requiring
13 employees to stay on the work premises during meal periods, Plaintiff and other non-party
14 Aggrieved Employees were forced to forego meal periods, have their meal periods interrupted,
15 and/or were otherwise not relieved of all duties during meal periods.

16 73. Thus, Defendants did not pay at least minimum wages for off-the-clock hours
17 that qualified for overtime premium payment. Also, to the extent that these off-the-clock
18 hours did not qualify for overtime premium payment, Defendants did not pay at least
19 minimum wages for those hours worked off-the-clock in violation of California Labor Code
20 sections 1182.12, 1194, 1197, and 1198.

21 74. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
22 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
23 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
24 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

25 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
26 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

27 75. At all relevant times herein set forth, the applicable IWC Wage Order and
28 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and

1 other non-party Aggrieved Employees’ employment by Defendants.

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

9 77. At all relevant times herein set forth, California Labor Code sections 226.7,
10 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
11 meal period mandated by an applicable order of the IWC.

12 78. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
13 1198, and the applicable IWC Wage Order also require employers to provide a second meal
14 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
15 to pay an employee one (1) additional hour of pay at the employee’s regular rate, except that if
16 the total hours worked is no more than twelve (12) hours, the second meal period may be
17 waived by mutual consent of the employer and the employee only if the first meal period was
18 not waived.

19 79. First, during the relevant period, Defendants had, and continue to have,
20 company-wide policies and/or practices of understaffing their locations while assigning heavy
21 workloads, which resulted in a lack of meal period coverage and prevented Plaintiff and/or
22 other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to
23 which they were entitled. Moreover, Defendants had, on a company-wide basis, failed to
24 adhere to a schedule of meal periods. These company-wide practices, coupled with the heavy
25 workload and pressure from Defendants to complete assigned tasks, impeded Plaintiff and
26 other non-party Aggrieved Employees from taking timely, compliant meal periods. As a
27 result, Plaintiff and/or other non-party Aggrieved Employees were forced to work in excess of
28 five (5) hours before taking a meal period and, at times, had their meal periods interrupted,

1 and/or had to forgo their meal periods altogether. For example, although Plaintiff regularly
2 clocked in for his shift at 5:30 a.m. or 6:00 a.m., Defendants never provided him a meal period
3 until 12:00 p.m. Because Defendants frowned upon employees accruing meal period
4 penalties, Defendants required Plaintiff and other non-party Aggrieved Employees to record
5 timely meal periods and/or adjusted employee time records to reflect compliant/timely meal
6 periods, regardless of whether they had received a compliant meal period at that time or not,
7 in order to limit meal penalties that Defendants would otherwise owe.

8 80. Furthermore, as described above, Defendants maintained and implemented a
9 company-wide on-premises meal period policy, which mandated that Plaintiff and other non-
10 party Aggrieved Employees remain on the work premises during their meal periods. Because
11 Plaintiff and other non-party Aggrieved Employees were restricted from leaving the premises
12 during meal periods, they were denied the ability to use their meal periods freely for their own
13 purposes, such as running personal errands. Thus, Defendants effectively maintained control
14 over Plaintiff and other non-party Aggrieved Employees during meal periods.

15 81. Additionally, Defendants did not provide Plaintiff and other non-party
16 Aggrieved Employees with second 30-minute meal periods on days when they worked in
17 excess of ten (10) hours in one day. During his employment, Plaintiff worked shifts in excess
18 of ten (10) hours or more per day, but was not provided a second 30-minute meal period.
19 Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on
20 days that they were entitled to meal periods and were not relieved of all duties.

21 82. Defendants knew or should have known that as a result of their company-wide
22 policies and/or practices, that Plaintiff and other non-party Aggrieved Employees were not
23 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
24 knew or should have known that they did not pay Plaintiff and other non-party Aggrieved
25 Employees meal period premiums when meal periods were missed, late, short, and/or
26 interrupted.

27 83. Defendants have also engaged in a company-wide practice and/or policy of not
28 paying all meal period premiums owed when compliant meal periods are not provided.

1 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
2 have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to
3 the extent that Defendants did pay other non-party Aggrieved Employees premium pay for
4 missed, late, and interrupted meal periods, Defendants did not pay other non-party Aggrieved
5 Employees at the correct rate of pay for premiums because Defendants systematically failed to
6 include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or
7 other forms of remuneration, in the regular rate of pay.

8 84. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
9 Employees compliant meal periods and failed to pay the full meal period premiums due.
10 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
11 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
12 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
13 (g).

14 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
15 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

16 85. At all relevant times herein set forth, the applicable IWC Wage Order and
17 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
18 non-party Aggrieved Employees' employment by Defendants.

19 86. At all relevant times, the applicable IWC Wage Order provides that "[e]very
20 employer shall authorize and permit all employees to take rest periods, which insofar as
21 practicable shall be in the middle of each work period" and that the "rest period time shall be
22 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
23 hours or major fraction thereof" unless the total daily work time is less than three and one-half
24 (3 ½) hours.

25 87. At all relevant times, California Labor Code section 226.7 provides that no
26 employer shall require an employee to work during any rest period mandated by an applicable
27 order of the California IWC. To comply with its obligation to authorize and permit rest
28 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an

1 employer must “relinquish any control over how employees spend their break time, and
2 relieve their employees of all duties—including the obligation that an employee remain on
3 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
4 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

5 88. Pursuant to the applicable IWC Wage Order and California Labor Code section
6 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
7 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
8 required rest period was not authorized and permitted.

9 89. During the relevant time period, Defendants regularly failed to authorize and
10 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
11 period per each four (4) hour period worked or major fraction thereof. Defendants’ company-
12 wide policies and/or practices of assigning heavy workloads and demanding employees
13 complete all assigned tasks within scheduled shifts prevented Plaintiff and other non-party
14 Aggrieved Employees from being relieved of all duty to take their rest periods.

15 90. In addition, Defendants did not staff sufficient employees to provide rest break
16 coverage to Plaintiff and other non-party Aggrieved Employees. Moreover, Defendants had,
17 on a company-wide basis, failed to adhere to a schedule of rest periods, which, coupled with
18 Defendants’ failure to provide adequate rest coverage, further led to Plaintiff and other non-
19 party Aggrieved Employees not being authorized and permitted to take compliant rest periods.

20 91. Furthermore, Defendants maintained and implemented a company-wide on-
21 premises rest period policy, which mandated that Plaintiff and other non-party Aggrieved
22 Employees remain on the work premises during their rest periods. Because Plaintiff and other
23 non-party Aggrieved Employees were restricted from leaving the premises during rest periods,
24 they were denied the ability to use their rest periods freely for their own purposes, such as
25 running personal errands. Thus, Defendants effectively maintained control over Plaintiff and
26 other non-party Aggrieved Employees during rest periods.

27 92. As a result, Plaintiff and other non-party Aggrieved Employees worked shifts
28 in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being

1 permitted and authorized to take all ten (10) minute rest periods as they were entitled. For
2 example, Plaintiff regularly took his rest periods late and missed his first or second rest
3 periods entirely at least twice per week due to understaffing and heavy workloads. Plaintiff
4 also never received a third rest period despite working shifts in excess of ten hours. Because
5 Defendants frowned upon employees accruing rest period penalties, Defendants required
6 Plaintiff and other non-party Aggrieved Employees to falsify the time rest periods were taken
7 and/or adjusted employee records to reflect compliant and/or timely rest periods, regardless of
8 whether they had received a compliant rest period at that time or not, in order to strictly limit
9 rest period penalties that Defendants would otherwise owe.

10 93. Defendants have also engaged in a company-wide practice and/or policy of not
11 paying all rest period premiums owed when compliant rest periods are not authorized and
12 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
13 Employees have not received premium pay for all missed rest periods. Alternatively, to the
14 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
15 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
16 Employees at the correct rate of pay for premiums because Defendants failed to include all
17 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
18 of remuneration, in the regular rate of pay.

19 94. Defendants' conduct violates the applicable IWC Wage Order and California
20 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
21 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
22 558 and/or 2699(a), (f), and (g).

23 **FAILURE TO PROVIDE HEAT RECOVERY PERIODS**
24 **VIOLATION OF LABOR CODE §§ 226.7, 516, AND 1198, AND CALIFORNIA**
25 **CODE OF REGULATIONS TITLE 8, SECTION 3395**

26 95. At all relevant times herein set forth, the applicable General Industry Safety
27 Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's
28 and other non-party Aggrieved Employees' employment by Defendants.

1 96. At all relevant times, California Labor Code section 226.7(a) defines “recovery
2 period” to mean a cooldown period afforded an employee to prevent heat illness. California
3 Labor Code section 226.7 provides that no employer shall require an employee to work during
4 any recovery period mandated by an applicable order of the California IWC, the Occupational
5 Safety and Health Standards Board, or the Division of Occupational Safety and Health. The
6 applicable General Industry Safety Order provides that “[w]hen the outdoor temperature in the
7 work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more
8 areas with shade at all times while employees are present that are either open to the air or
9 provided with ventilation or cooling.” Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore,
10 “[t]he amount of shade present shall be at least enough to accommodate the number of
11 employees on recovery or rest periods, so that they can sit in a normal posture fully in the
12 shade without having to be in physical contact with each other.” *Id.* “Employees shall be
13 allowed and encouraged to take a preventative cool-down rest in the shade when they feel the
14 need to do so to protect themselves from overheating. Such access to shade shall be permitted
15 at all times.” *Id.*

16 97. During the relevant time period, Defendants violated California Labor Code
17 section 226.7 and California Code of Regulations, Title 8, section 3395(d), because
18 Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with
19 recovery periods. For example, Plaintiff was not provided a shaded area for recovery near his
20 workstation and was not permitted to take recovery periods in a shaded area while working at
21 the job site.

22 98. Defendants also have engaged in a company-wide practice and/or policy of not
23 paying all recovery period premiums owed when compliant recovery periods are not provided.
24 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
25 have not received premium pay for all missed recovery periods. Alternatively, to the extent
26 that Defendants did pay other non-party Aggrieved Employees for missed recovery periods,
27 Defendants did not pay other non-party Aggrieved Employees at the correct rate of pay,
28 because Defendants systematically failed to include all compensation, such as incentive pay,

1 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

2 99. Defendants' conduct violates the applicable General Industry Safety Order and
3 California Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
4 Employees are therefore entitled to civil penalties pursuant to Labor Code sections 558 and/or
5 2699(a), (f)-(g).

6 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

7 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

13 101. During the relevant time period, Defendants have knowingly and intentionally
14 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
15 inaccurate wage statements. For example, Defendants issued uniform wage statements to
16 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
17 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
18 the pay period, including rates of pay for overtime wages and/or meal, rest, and recovery
19 period premiums, and the corresponding number of hours worked at each hourly rate.
20 Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

21 102. Because Defendants did not record the time Plaintiff and other non-party
22 Aggrieved Employees spent working off-the-clock and improperly rounded their total hours
23 worked, Defendants did not list the correct amount of gross wages and net wages earned by
24 Plaintiff and other non-party Aggrieved Employees in compliance with section 226(a)(1) and
25 section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the
26 total number of hours worked by Plaintiff and other non-party Aggrieved Employees, in
27 violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect
28 during the pay period and the corresponding accurate number of hours worked at each hourly

1 rate, in violation of section 226(a)(9).

2 103. Additionally, because Defendants did not calculate other non-party Aggrieved
3 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal,
4 rest, and recovery period premiums, Defendants did not list the correct amount of gross wages
5 in compliance with section 226(a)(1). For the same reason, Defendants also failed to list the
6 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to
7 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates
8 of pay for overtime wages and/or meal, rest, and recovery period premiums, in violation of
9 section 226(a)(9).

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

18 105. California Labor Code section 1174(d) provides that “[e]very person employing
19 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
20 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
21 plants or establishments at which employees are employed, payroll records showing the hours
22 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
23 applicable piece rate paid to, employees employed at the respective plants or
24 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
25 civil penalty if they fail to maintain accurate and complete records as required by section
26 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
27 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
28 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto

1 as a result of failing to record the off-the-clock hours that they worked and improperly
2 rounding Plaintiff's and other non-party Aggrieved Employees' total hours worked.

3 106. California Labor Code section 1198 provides that the maximum hours of work
4 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
5 set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he
6 employment of any employees for longer hours than those fixed by the order or under
7 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
8 Wage Order, employers are required to keep accurate time records showing when the
9 employee begins and ends each work period and meal period. During the relevant time
10 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
11 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
12 in violation of section 1198. As stated, Defendants engaged in a company-wide practice
13 and/or policy of falsifying Plaintiff's and other non-party Aggrieved Employees' time records
14 by recording that compliant meal periods were taken regardless of if or when meal periods
15 were actually taken, and thereby failed to keep accurate records of meal start and end times for
16 Plaintiff and other non-party Aggrieved Employees. Furthermore, in light of Defendants'
17 failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute
18 meal periods to which they were entitled, Defendants kept no records of meal start and end
19 times for second meal periods.

20 107. Defendants' conduct violates California Labor Code sections 226(a), 1174(d),
21 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
22 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

23 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

24 **VIOLATION OF LABOR CODE SECTION 204**

25 108. At all relevant times herein set forth, California Labor Code section 204
26 requires that all wages earned by any person in any employment between the 1st and the 15th
27 days, inclusive, of any calendar month, other than those wages due upon termination of an
28 employee, are due and payable between the 16th and the 26th day of the month during which

1 the labor was performed. Labor Code section 204 further provides that all wages earned by
2 any person in any employment between the 16th and the last day, inclusive, of any calendar
3 month, other than those wages due upon termination of an employee, are due and payable
4 between the 1st and the 10th day of the following month.

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

11 110. During the relevant time period, Defendants willfully failed to pay Plaintiff and
12 other non-party Aggrieved Employees all wages due to them within any time period specified
13 by California Labor Code section 204 including, but not limited to, overtime wages; minimum
14 wages; meal, rest, and recovery period premiums; and/or reporting time pay.

15 111. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
16 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

17 **FAILURE TO PAY WAGES UPON TERMINATION**

18 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

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

26 113. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
27 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
28 above, including but not limited to, overtime wages; minimum wages; meal, rest, and recovery

1 period premiums; and/or reporting time pay, either at the time of discharge, or within seventy-
2 two (72) hours of their leaving Defendants' employ.

3 114. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
4 who are no longer employed by Defendants their wages earned and unpaid at the time of
5 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
6 Labor Code sections 201, 202 and 203. Plaintiff and other non-party Aggrieved Employees
7 are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
8 2699(a), (f), and (g).

9 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN**

10 **VIOLATION OF LABOR CODE SECTIONS 551 AND 552**

11 115. At all relevant times herein, California Labor Code section 551 provides that
12 every person employed in any occupation of labor is entitled to one day's rest in seven.
13 Additionally, California Labor Code section 552 prohibits employers from requiring
14 employees to work more than six consecutive days without a day of rest.

15 116. Further, at all times relevant herein set forth, California Labor Code section 556
16 exempts an employer from the day-of-rest requirement when the total hours worked by an
17 employee do not exceed 30 hours in any week or six hours in any one day thereof.

18 117. During the relevant period, Defendants scheduled Plaintiff and other non-party
19 Aggrieved Employees to work eight (8) or more hours per day and more than six (6)
20 consecutive days in a workweek. For example, during the time-period of 8/17/2020 to
21 8/23/2020, Plaintiff worked seven (7) straight days during a workweek without being afforded
22 the opportunity to take one day's rest. Because Plaintiff and other non-party Aggrieved
23 Employees worked over 30 hours per week and over six (6) hours per day in a workweek, they
24 were not exempt from the day-of-rest requirement. To the extent that Plaintiff and other non-
25 party Aggrieved Employees may have signed purported waivers of their right to a day's rest in
26 seven, such waivers are invalid. Thus, Defendants caused Plaintiff and other non-party
27 Aggrieved Employees to work more than six days in seven, in violation of Labor Code
28 sections 551 and 552.

1 118. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
2 recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

3 **FAILURE TO PAY REPORTING TIME PAY**

4 **VIOLATION OF LABOR CODE SECTION 1198**

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

10 120. California Code of Regulations, Title 8, section 11140(5)(A) provides that
11 “[e]ach workday an employee is required to report for work and does report, but is not put to
12 work or is furnished less than half said employee’s usual or scheduled day’s work, the
13 employee shall be paid for half the usual or scheduled day’s work, but in no event for less
14 than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which
15 shall not be less than the minimum wage.” The “primary purpose of the reporting time
16 regulation” is “to guarantee at least partial compensation for employees who report to work
17 expecting to work a specified number of hours, and who are deprived of that amount because
18 of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch*
19 *Cellular*, 209 Cal. App. 4th 556 (2012).

20 121. Upon information and belief, Defendants violated California Labor Code
21 section 1198 and California Code of Regulations, Title 8, section 11140(5), because
22 Defendants failed to pay Plaintiff and other non-party Aggrieved Employees reporting time
23 pay when they reported to work for their scheduled shift but were put to work for less than
24 half of the regular schedule.

25 122. Defendants had a company-wide practice of sending Plaintiff and other non-
26 party Aggrieved Employees home early from their shifts, including before they had worked at
27 least half of their regular shift, but would not pay Plaintiff and other non-party Aggrieved
28 Employees for half of their scheduled shift. For example, approximately 1-2 times per month,

1 Plaintiff reported to work for his scheduled shift, but was told to go home three 3-5 hours into
2 his shift because of the weather. Although Plaintiff and other non-party Aggrieved
3 Employees would report to work based on the schedule that Defendants provided to them,
4 Defendants would send them home before they had worked at least half of their scheduled
5 shifts without giving them reporting time pay and/or pay for at least half their scheduled shift.
6 Accordingly, Plaintiff and other non-party Aggrieved Employees were not properly
7 compensated with reporting time pay in violation of California Labor Code section 1198 and
8 California Code of Regulations, Title 8, section 11140(5).

9 123. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
10 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

11 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**
12 **VIOLATION OF LABOR CODE SECTION 2802**

13 124. At all times herein set forth, California Labor Code section 2802 provides that
14 an employer must reimburse employees for all necessary expenditures and losses incurred by
15 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
16 to prevent employers from passing off their cost of doing business and operating expenses on
17 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
18 (2014). The applicable wage order, IWC Wage Order No. 14-2001, provides that: "[w]hen the
19 employer requires the use of tools or equipment or they are necessary to the performance of a
20 job, such tools and equipment shall be provided and maintained by the employer, except that
21 an employee whose wages are at least two (2) times the minimum wage may provide and
22 maintain hand tools and equipment customarily required by the particular trade or craft."

23 125. During the relevant time period, Defendants, on a company-wide basis,
24 required that Plaintiff and other non-party Aggrieved Employees travel in their own personal
25 vehicles to and from Defendants' office location to Defendants' other work sites, but failed to
26 reimburse them for all costs of travel, including mileage. For example, Plaintiff was
27 instructed to drive his own vehicle to pick up and drop off tools and water to and from
28 Defendants' office location to other work sites during his shifts. Although Defendant required

1 Plaintiff and other non-party Aggrieved Employees to utilize their own personal vehicles to
2 complete these work-related duties, Defendants never reimbursed them for all of their travel
3 expenses and/or mileage.

4 126. Defendants could have provided Plaintiff and other non-party Aggrieved
5 Employees with the actual tools for use on the job, such as company vehicles, or could have
6 reimbursed employees for their mileage and travel expenses. Instead, Defendants passed
7 these operating costs off onto Plaintiff and other non-party Aggrieved Employees. At all
8 relevant times, Plaintiff and other non-party Aggrieved Employees did not earn at least two
9 (2) times the minimum wage.

10 127. Defendants' company-wide policy and/or practice of passing on their operating
11 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
12 section 2802. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
13 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

14 **REQUEST FOR JURY TRIAL**

15 Plaintiff requests a trial by jury.

16 **PRAYER FOR RELIEF**

17 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
18 judgment against Defendants, jointly and severally, as follows:

19 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
20 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

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

22 2. That the Court declare, adjudge and decree that Defendants violated the
23 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
24 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
25 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
26 1198, and the applicable IWC Wage Order (by failing to provide all meal periods); 226.7, 516,
27 and 1198 (by failing to authorize and permit all rest periods); 226.7, 516, and 1198 (by failing
28 to provide heat recovery periods); 226(a), 1174(d), and 1198 (by failing to provide accurate

wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 551 and 552 (by failing to provide one day's rest in seven); 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay); and 2802 (by failing to reimburse business expenses);

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

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

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

Dated: September 7, 2021

Respectfully submitted,

Capstone Law APC

By: 
Orlando Villalba
Helga Hakimi
Roxanna Tabatabaeepour

Attorneys for Plaintiff Agustin Vera Gallardo

EXHIBIT “1”



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July 2, 2021

VIA ONLINE SUBMISSION

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

Subject: *Agustin Vera Gallardo v. J. Marchini & Son, Inc., et al.*

Dear PAGA Administrator:

This office represents Agustin Vera Gallardo in connection with his claims under the California Labor Code. Mr. Vera Gallardo was an employee of J. MARCHINI & SON, INC. and/or MINTURN NUT CO., INC. For the purposes of this letter, Mr. Vera Gallardo collectively refers to these entities as "MARCHINI".

The employers may be contacted directly at the addresses below:

J. MARCHINI & SON, INC.
12000 EAST LE GRAND ROAD
LE GRAND, CA 95333

MINTURN NUT CO., INC.
8800 S MINTURN RD
LE GRAND CA 95333

Mr. Vera Gallardo 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. Vera Gallardo seeks relief on behalf of himself, the State of California, and other persons who are or were employed by MARCHINI 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.

MARCHINI employed Mr. Vera Gallardo as an hourly paid, non-exempt Agricultural Worker from approximately March 30, 2015 to September 9, 2020. Mr. Vera Gallardo worked for MARCHINI at its location in Le Grand, California. During his employment, Mr. Vera Gallardo typically worked nine (9) hours or more per day and six (6) days per week. At the time Mr. Vera Gallardo's

employment with MARCHINI ended, he earned approximately \$14.75 per hour. His job duties included, without limitation, installing PVC and aluminum piping for irrigation systems, harvesting kale, and cleaning and fixing leaks on water lines.

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

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

J. MARCHINI & SON, INC., which does business as J. Marchini Farms, and MINTURN NUT CO., INC. are California corporations and leading growers, packers and shippers of produce and almonds. Upon information and belief, MARCHINI maintains a single, centralized Human Resources (HR) department at its company headquarters in Le Grand, California for all non-exempt, hourly paid employees working for MARCHINI in California, including Mr. Vera Gallardo and other aggrieved employees. At all relevant times, MARCHINI issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Vera Gallardo and other aggrieved employees, regardless of its location or position.

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

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

Specifically, IWC Wage Order 14-2001 provides that, effective January 1, 2020, employers are and were required to pay employees working more than nine (9) hours in a day or more than fifty (50) hours in a workweek, at the rate of time and one-half ($1\frac{1}{2}$) 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 ($8\frac{1}{2}$) hours in a day or more than forty-five (45) hours in a workweek, at the rate of time and one-half ($1\frac{1}{2}$) for all hours worked in excess of eight and one-half ($8\frac{1}{2}$) 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.

MARCHINI willfully failed to pay all overtime wages owed to Mr. Vera Gallardo and other aggrieved employees. During the relevant time period, Mr. Vera Gallardo 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, MARCHINI had, and continues to have, a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in their timekeeping system to the nearest half (0.5) of an hour. MARCHINI's rounding policy resulted in the failure to compensate Mr. Vera Gallardo and other aggrieved employees fully for all hours worked, causing Mr. Vera Gallardo and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. MARCHINI's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Vera Gallardo and other aggrieved employees. To the extent MARCHINI's rounding policy has taken away time worked that was eligible for overtime, Mr. Vera Gallardo and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant period, MARCHINI had a company-wide policy and/or practice of failing to accurately record all hours worked by its employees and thus restricted overtime accrual. MARCHINI did not provide employees with an appropriate timekeeping mechanism, such as a time clock or electronic timekeeping system, to accurately track and record their hours worked. Instead, MARCHINI required employees to record their time on handwritten timesheets which were subsequently and frequently interlineated, altered and/or falsified by supervisors. Essentially, MARCHINI's supervisors maintained control and/or discretion over employees' clock-in and clock-out times reported on their handwritten timesheets, and the times recorded would be their scheduled shifts, instead of their actual hours worked.

Moreover, MARCHINI had and continues to have, a company-wide policy of discouraging and impeding Mr. Vera Gallardo and other aggrieved employees from recording hours worked outside of their scheduled shifts while simultaneously understaffing its locations and assigning Mr. Vera Gallardo and other aggrieved employees heavy workloads. MARCHINI expected Mr. Vera Gallardo and other aggrieved employees to complete all of their assigned tasks within their scheduled shifts, which further led Mr. Vera Gallardo and other aggrieved employees to perform work outside of their scheduled shifts.

MARCHINI's policies and/or practices of limiting overtime and the recording of hours worked outside of scheduled shifts, coupled with MARCHINI's assignment of heavy workloads, led Mr.

Vera Gallardo and other aggrieved employees to work off-the-clock before and after their scheduled shift times.

For example, Mr. Vera Gallardo was forced to spend approximately 20 minutes prior to clocking in for his scheduled shift preparing and organizing water lines. As a further example, Mr. Vera Gallardo would spend approximately 30 minutes after his scheduled shift had ended each day during harvesting season, and at least twice per month during the remaining seasons, preparing and organizing water lines for the next day due to the heavy workload and lack of coverage. Mr. Vera Gallardo would get reprimanded and threatened with termination by MARCHINI's supervisors if he reported this off-the-clock work. MARCHINI did not compensate Mr. Vera Gallardo and other aggrieved employees for the time they worked before and after their scheduled shifts. At all times, Mr. Vera Gallardo and other aggrieved employees remained under the control of MARCHINI. MARCHINI could have recorded this off-the-clock work, but refused to do so to avoid paying Mr. Vera Gallardo and other aggrieved employees overtime wages.

Third, during the relevant time period, MARCHINI maintained and implemented a company-wide on-premises meal period policy, which mandated that Mr. Vera Gallardo and other aggrieved employees remain on the work premises during their meal periods. Because Mr. Vera Gallardo and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, MARCHINI effectively maintained control over Mr. Vera Gallardo and other aggrieved employees during meal periods.

Fourth, MARCHINI's company-wide policy and/or practice of understaffing its locations while assigning heavy workloads (*see supra*), resulted in a failure to provide Mr. Vera Gallardo and/or other aggrieved employees with adequate meal period coverage. MARCHINI also failed to adhere to a schedule of meal periods, which further caused Mr. Vera Gallardo and/or other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, other aggrieved employees missed or had meal periods interrupted in order to complete their assigned tasks. Consequently, other aggrieved employees performed work during meal periods for which they were not paid.

MARCHINI knew or should have known that as a result of these company-wide practices and/or policies, Mr. Vera Gallardo and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and/or during meal periods and were suffered or permitted to perform work for which they were not paid. Because Mr. Vera Gallardo 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. Vera Gallardo and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

MARCHINI's failure to pay Mr. Vera Gallardo 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. Vera Gallardo 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 IWC Wage Order No. 14-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11140(2)(G) (defining "Hours Worked").

As set forth above, during the relevant time period, due to MARCHINI's policy of rounding Mr. Vera Gallardo's and other aggrieved employees' clock-in and clock-out times to the half (0.5) hour, MARCHINI failed to compensate Mr. Vera Gallardo and other aggrieved employees fully for all hours worked. As also set forth above, MARCHINI failed to provide Mr. Vera Gallardo and other aggrieved employees with an appropriate timekeeping mechanism, such as a time clock or electronic timekeeping system, to accurately track and record their hours worked. Instead, MARCHINI maintained a policy and/or practice of altering and/or falsifying employee handwritten timesheets to reflect scheduled hours rather than hours actually worked, thereby shorting Mr. Vera Gallardo and other aggrieved employees for work performed outside their scheduled shifts.

Further, as stated above, MARCHINI had a company-wide policy and/or practice of assigning Mr. Vera Gallardo and other aggrieved employees heavy workloads with the expectation that they complete all of their assigned tasks within their scheduled shifts, which further led Mr. Vera Gallardo and other aggrieved employees to perform work outside their scheduled shifts. Moreover, due to MARCHINI's policies and/or practices of understaffing while assigning of heavy workloads, failing to schedule meal periods, and requiring employees to stay on the work premises during meal periods, Mr. Vera Gallardo 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, MARCHINI did not pay at least minimum wages for all hours worked by Mr. Vera Gallardo and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, MARCHINI did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

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

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

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

During the relevant period, MARCHINI had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Mr. Vera Gallardo and/or other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Moreover, MARCHINI has, on a company-wide basis, failed to adhere to a schedule of meal periods. These company-wide practices, coupled with the heavy workload and pressure from MARCHINI to complete assigned tasks, impeded Mr. Vera Gallardo and other aggrieved employees from taking timely, compliant meal periods. As a result, Mr. Vera Gallardo and/or other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, although Mr. Vera Gallardo regularly clocked in for his shift at 5:30 a.m. or 6:00 a.m., MARCHINI never provided him a meal period until 12:00 p.m. Because MARCHINI frowned upon employees accruing meal period penalties, MARCHINI required Mr. Vera Gallardo and other aggrieved employees to record timely meal periods and/or adjusted employee time records to reflect compliant/timely meal periods, regardless of whether they had received a compliant meal period at that time or not, in order to limit meal penalties that MARCHINI would otherwise owe.

Furthermore, as described above, MARCHINI maintained and implemented a company-wide on-premises meal period policy, which mandated that Mr. Vera Gallardo and other aggrieved employees remain on the work premises during their meal periods. Because Mr. Vera Gallardo and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, MARCHINI effectively maintained control over Mr. Vera Gallardo and other aggrieved employees during meal periods.

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

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

Furthermore, MARCHINI 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. Vera Gallardo and other aggrieved employees have not received premium pay for missed, interrupted, and/or late meal periods. Alternatively, to the extent that MARCHINI did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, MARCHINI did not pay other aggrieved employees at the correct rate of pay for premiums because MARCHINI 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, MARCHINI failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Vera Gallardo and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

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

During the relevant time period, MARCHINI regularly failed to authorize and permit Mr. Vera Gallardo and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. MARCHINI's company-wide policies and/or practices of assigning heavy workloads and demanding employees complete all assigned tasks within scheduled shifts prevented Mr. Vera Gallardo and other aggrieved employees from being relieved of all duty to take their rest periods. In addition, MARCHINI did not staff sufficient employees to provide rest break coverage to Mr. Vera Gallardo and other aggrieved employees. Moreover, MARCHINI has, on a company-wide basis, failed to adhere to a schedule of rest periods, which, coupled with

MARCHINI's failure to provide adequate rest coverage, further led to Mr. Vera Gallardo and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, during the relevant time period, MARCHINI maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Vera Gallardo and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Vera Gallardo 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, MARCHINI effectively maintained control over Mr. Vera Gallardo and other aggrieved employees during rest periods.

As a result of MARCHINI's practices and policies, Mr. Vera Gallardo 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. Vera Gallardo regularly took his rest periods late and missed his first or second rest periods entirely at least twice per week due to understaffing and heavy workloads. Mr. Vera Gallardo also never received a third rest period despite working shifts in excess of ten hours. Because MARCHINI frowned upon employees accruing rest period penalties, MARCHINI required Mr. Vera Gallardo and other aggrieved employees to falsify the time rest periods were taken and/or adjusted employee records to reflect compliant/timely rest periods, regardless of whether they had received a compliant rest period at that time or not, in order to strictly limit rest period penalties that MARCHINI would otherwise owe.

MARCHINI 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 MARCHINI did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, MARCHINI did not pay other aggrieved employees at the correct rate of pay for premiums because MARCHINI 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, MARCHINI failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Vera Gallardo 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 & California Code of Regulations Title 8, Section 3395 – Failure to Provide Heat Recovery Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide recovery 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 or recovery period is not provided. California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code of Reg., Title 8,

§ 3395(d)(1). Furthermore, “[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other.” *Id.* “Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.” *Id.*

During the relevant time period, MARCHINI violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because MARCHINI failed to provide Mr. Vera Gallardo and other aggrieved employees with recovery periods. For example, Mr. Vera Gallardo was not provided a shaded area for recovery near his workstation and was not permitted to take recovery periods in a shaded area while working at the job site.

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

Accordingly, MARCHINI failed to authorize and permit all recovery periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Vera Gallardo 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. MARCHINI has not provided Mr. Vera Gallardo 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, MARCHINI has knowingly and intentionally provided Mr. Vera Gallardo and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, MARCHINI issued uniform wage statements to Mr. Vera Gallardo and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, MARCHINI violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because MARCHINI did not record the time Mr. Vera Gallardo and other aggrieved employees spent working off-the-clock and improperly rounded Mr. Vera Gallardo's and other aggrieved employees' hours worked, MARCHINI did not list the correct amount of gross wages and net wages earned by Mr. Vera Gallardo and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, MARCHINI failed to accurately list the total number of hours worked by Mr. Vera Gallardo and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

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

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[keep, 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), MARCHINI willfully failed to maintain accurate payroll records for Mr. Vera Gallardo and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Vera Gallardo's and other aggrieved employees' total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. 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, MARCHINI engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Vera Gallardo and other aggrieved employees, in violation of section 1198. Also, as stated, MARCHINI engaged in a company-wide practice and/or policy of falsifying Mr. Vera Gallardo's and other aggrieved employees' time records

by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Vera Gallardo and other aggrieved employees. Furthermore, in light of MARCHINI’s failure to provide Mr. Vera Gallardo and other aggrieved employees with second 30-minute meal periods to which they were entitled, MARCHINI kept no records of meal start and end times for second meal periods.

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

Mr. Vera Gallardo 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.

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

Mr. Vera Gallardo 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 §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six (6) consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed thirty (30) hours in any week or six (6) hours in any one day thereof.

During the relevant time period, MARCHINI scheduled Mr. Vera Gallardo and other aggrieved employees to work eight (8) or more hours per day and more than six (6) consecutive days in a workweek. For example, during the time-period of 8/17/2020 to 8/23/2020, Mr. Vera Gallardo worked seven (7) straight days during a workweek without being afforded the opportunity to take one day's rest. Because Mr. Vera Gallardo and other aggrieved employees worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that other aggrieved employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, MARCHINI caused Mr. Vera Gallardo and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Vera Gallardo 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 § 1198 and California Code of Regulations Title 8, Section 11140 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11140(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived

of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

Upon information and belief, MARCHINI violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11140(5), because MARCHINI failed to pay Mr. Vera Gallardo and other aggrieved employees reporting time pay when they reported to work for their scheduled shift, but were put to work for less than half of the regular schedule. MARCHINI had a company-wide practice of sending Mr. Vera Gallardo and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Vera Gallardo and other aggrieved employees for half of their scheduled shift. For example, approximately 1-2 times per month, Mr. Vera Gallardo reported to work for his scheduled shift, but was told to go home three 3-5 hours into his shift because of the weather. Although Mr. Vera Gallardo and other aggrieved employees would report to work based on the schedule that MARCHINI provided to them, MARCHINI would send them home before they had worked at least half of their scheduled shifts and without giving them reporting time pay and/or pay for at least half their scheduled shift. Accordingly, Mr. Vera Gallardo and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11140(5).

Mr. Vera Gallardo 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 § 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 No. 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.”

MARCHINI had, and continues to have, a company-wide policy of requiring Mr. Vera Gallardo and other aggrieved employees to travel in their own personal vehicles to and from MARCHINI’s office location to other MARCHINI work sites, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Vera Gallardo was instructed to drive his own vehicle to pick up and drop off tools and water to and from MARCHINI’s office location to other work sites during his shifts. Although MARCHINI required Mr. Vera Gallardo and other aggrieved employees to utilize their own personal vehicles to complete these work-related duties, MARCHINI never reimbursed them for all of their travel expenses/mileage.

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

Thus, MARCHINI 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. Vera Gallardo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Mr. Vera Gallardo 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. Vera Gallardo, 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 MARCHINI for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

Pre-Litigation Demand

This notice shall further serve as Mr. Vera Gallardo's reasonable attempt to settle his dispute with MARCHINI prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform MARCHINI of Mr. Vera Gallardo aforementioned grievances and the proposed remedies as detailed below, while affording MARCHINI a reasonable opportunity to satisfy Mr. Vera Gallardo's demands.

Demand is hereby made that MARCHINI shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. MARCHINI shall pay Mr. Vera Gallardo all other aggrieved employees employed by MARCHINI at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. MARCHINI shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal, rest, and recovery periods, and paid all reporting time pay.

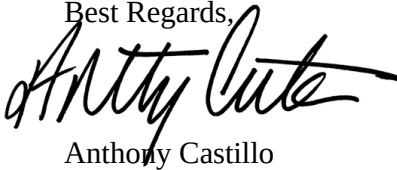
3. MARCHINI shall conduct a survey or interview all current and former aggrieved employees in California who worked for MARCHINI in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; the number of recovery periods which were not provided; and the number of employees who were required to use their personal vehicles, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. MARCHINI shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. MARCHINI also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198. Additionally, MARCHINI also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more recovery periods, as required by Labor Code sections 226.7, 516, and 1198.
5. MARCHINI shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
6. MARCHINI shall provide Mr. Vera Gallardo and all aggrieved employees employed by MARCHINI at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
7. MARCHINI shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
8. MARCHINI shall implement and maintain one or more work areas with shade at all times while aggrieved employees are present that are either open to the air or provided with ventilation or cooling and shall provide heat recovery periods to aggrieved employees.
9. MARCHINI shall provide all aggrieved employees who worked over thirty (30) hours per week and over six (6) hours per day in a workweek with one day's rest in seven, as required by Labor Code sections 551 and 552.
10. MARCHINI shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
11. MARCHINI shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for MARCHINI's benefit, including, but not limited to, costs of mileage, as required by Labor Code section 2802.
12. MARCHINI shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, et

seq., including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 14-2001, section 18.

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 "Anthony Castillo", with a stylized, cursive script.

Anthony Castillo

Copy: J. MARCHINI & SON, INC. (via U.S. Certified Mail); MINTURN NUT CO., INC. (via U.S. Certified Mail)

CERTIFIED MAIL



7020 1810 0000 4166 0071



COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

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☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

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☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3.

■ Print your name and address on the reverse so that we can return the card to you.

■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

J. MARCHINI & SON, INC.
12000 EAST LE GRAND ROAD
LE GRAND, CA 95333



9590 9402 1512 5362 2524 82

2. Article Number (Transfer from service label)

7020 1810 0000 4166 0071

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

Capstone
LAW APC

1875 Century Park East, Suite 1000
Los Angeles, California 90067

J. MARCHINI & SON, INC.
12000 EAST LE GRAND ROAD
LE GRAND, CA 95333

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Extra Services & Fees (check box, and fee if applicable)

☐ Return Receipt (hardcopy) \$ 2.85

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☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

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Total Postage and Fees

\$ 8.08

Sent to

Street and/or

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J. MARCHINI & SON, INC.

12000 EAST LE GRAND ROAD

LE GRAND, CA 95333

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Callardo v.
J. Marchini

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Capstone
LAW APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067

MINTURN NUT CO., INC.
8800 S MINTURN RD
LE GRAND CA 95333

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MINTURN NUT CO., INC.
8800 S MINTURN RD
LE GRAND CA 95333



9590 9402 1512 5362 2524 75

2. Article Number (Transfer from service label)

7020 1810 0000 4166 0088

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

OFFICIAL USE

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

Certified Mail Fee

\$ 3.60

Postage Services & Fees (check box, and fee per applicable)

☒ Return Receipt (hardcopy) \$ 2.85

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Restricted Delivery \$

☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.03

Total Postage and Fees

\$ 8.03

Sent to

Street and Apt. No., or PO BOX

City, State, ZIP+4®

MINTURN NUT CO., INC.
8800 S MINTURN RD
LE GRAND CA 95333

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Postmark
Harris
Gallardo v
Morchim