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11 FRANCISCO RODRIGUEZ, and all others similarly situated

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF IMPERIAL**
15 **(UNLIMITED JURISDICTION)**

16 FRANCISCO RODRIGUEZ, on behalf of
17 himself and all others similarly situated, and as
18 an "aggrieved employee" on behalf of other
19 "aggrieved employees" under the Labor Code
20 Private Attorneys General Act of 2004,

21 *Plaintiff,*

22 vs.

23 JETT HARVEST, INC., a California
24 corporation; JOSE ANTONIO LOPEZ, an
25 individual; PRIME AG SERVICES INC., a
26 California corporation; and DOES 1-50,
27 inclusive,

28 *Defendants.*

FILED

11/16/2021

SUPERIOR COURT
COUNTY OF IMPERIAL
CLERK OF THE COURT
BY Angela Janitz, DEPUTY

Case No. ECU002119

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 221, 226.2, 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code §§ 226 and 226.2);
6. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq; and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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Plaintiff, FRANCISCO RODRIGUEZ (hereafter “Plaintiff”), on behalf of himself and all others similarly situated, complains and alleges as follows:

I. INTRODUCTION

1. Plaintiff brings this class and representative action for alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 14-2001 (hereafter “the Wage Order”), and the California Business and Professions Code against Defendants JETT HARVEST, INC., a California corporation, JOSE ANTONIO LOPEZ, an individual, PRIME AG SERVICES INC., a California corporation, and Does 1 through 50, inclusive (collectively “Defendants”).

2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to him and other similarly situated workers for unpaid wages, statutory penalties, interest, and related relief. These claims are based on Defendants’ failures to:

- (A) Pay all wages, including minimum, regular, overtime and doubletime wages, earned for all hours worked at the correct rates of pay;
- (B) Separately compensate for rest and recovery periods and other non-productive time;
- (C) Provide all meal periods;
- (D) Authorize and permit all rest breaks;
- (E) Pay premium wages for unprovided meal periods;
- (F) Pay premium wages for unprovided rest breaks;
- (G) Indemnify for necessary work-related expenditures;
- (H) Issue only accurate and complete itemized wage statements;
- (I) Issue statements of the total hours of rest and recovery periods;
- (J) Timely pay wages upon termination of employment;

Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages, restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class action.

II. THE PARTIES

3. Plaintiff FRANCISCO RODRIGUEZ is a resident of California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11160 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

4. Defendant JETT HARVEST, INC. is corporation organized and existing under the laws of and also a citizen of California based on Plaintiff’s information and belief.



1 5. Defendant PRIME AG SERVICES INC. is a corporation organized and existing
2 under the laws of California and also a citizen of California based on Plaintiff's information and
3 belief.

4 6. Defendant JOSE ANTONIO LOPEZ is an individual and also a citizen of
5 California based on Plaintiff's information and belief.

6 7. In relevant part, California Labor Code § 558.1 states:

7 (a) Any employer or other person acting on behalf of an employer, who
8 violates, or causes to be violated, any provision regulating minimum wages
9 or hours and days of work in any order of the Industrial Welfare
10 Commission, or violates, or causes to be violated, §§ 203, 226, 226.7,
11 1193.6, 1194, or 2802, may be held liable as the employer for such
12 violation.

13 (b) For purposes of this section, the term "other person acting on behalf
14 of an employer" is limited to a natural person who is an owner, director,
15 officer, or managing agent of the employer, and the term "managing
16 agent" has the same meaning as in subdivision (b) of § 3294 of the Civil
17 Code.

18 8. Based on Plaintiffs' information and belief, Defendant JOSE ANTONIO LOPEZ
19 is natural person and an owner, director, officer, and/or managing agent of Defendants JETT
20 HARVEST, INC., and PRIME AG SERVICES INC., who directly or indirectly, or through an
21 agent or any other person, employed or exercised control over the wages, hours, or working
22 conditions of Plaintiffs and the Class. Therefore, he is liable to Plaintiff and the Class for his
23 violations of, or causing Defendants to violate the Labor Code and the Wage Order pursuant to
24 Labor Code section 558.1.

25 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
26 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
27 is informed and believes and thereon alleges that said Defendants are legally responsible for the
28 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
when ascertained.

 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times
herein, all Defendants were the agents, employees and/or servants, masters or employers of the
remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act



1 within the course and scope of such agency, employment, direction and control, and with the
2 approval and ratification of each of the other Defendants.

3 11. At all relevant times, in perpetrating the acts and omissions alleged herein,
4 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
5 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
6 Members or otherwise complying with their rights in accordance with applicable California labor
7 laws as alleged herein.

8 12. At all relevant times, in perpetrating the acts and omissions alleged herein,
9 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
10 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
11 described class in accordance with applicable laws as alleged herein.

12 **III. CLASS ALLEGATIONS**

13 13. This action has been brought and may be maintained as a class action pursuant to
14 California Code of Civil Procedure section 382 because there is a well-defined community of
15 interest among the persons who comprise the readily ascertainable class defined below and
16 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
17 a class action.

18 14. **Class Definition:** The Class is defined as follows: all persons Defendants
19 employed in California as hourly and piece rate, non-exempt workers, including but not limited
20 to laborers, agriculture employees, loaders, cutters, laborers, packers, boxers, individuals
21 performing work comparable to the aforementioned, compensated comparably to the
22 aforementioned, individuals in similar positions, at any time during the period beginning four
23 years prior to the filing of this action and ending on the date that final judgment is entered in this
24 action (“Class” or “Class Members”).

25 15. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
26 right to amend or modify the class definition with greater specificity, by further division into
27 subclasses and/or by limitation to particular issues.

28 16. **Numerosity:** The Class Members are so numerous that the individual joinder of
each individual Class Member is impractical. While Plaintiff does not currently know the exact
number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
minimum required for numerosity under California laws.



1 17. **Commonality and Predominance:** Common questions of law and fact exist as to
2 all Class Members and predominate over any questions which affect only individual Class
3 Members. These questions include, but are not limited to:

4 A. Whether Defendants failed to pay all wages earned to Class Members for
5 all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime,
6 meal period premium, rest period premium, rest and recovery, nonproductive time, reporting time,
7 and split shift wages;

8 B. Whether Defendants failed to provide the Class Members with all meal
9 periods in compliance with California law;

10 C. Whether Defendants failed to authorize and permit the Class Members to
11 take all rest periods in compliance with California law;

12 D. Whether Defendants failed to indemnify the Class Members for the
13 reasonable expenses they incurred during the course of performing their duties;

14 E. Whether Defendants knowingly and intentionally failed to provide the
15 class with accurate and complete itemized wage statements;

16 F. Whether Defendants willfully failed to provide the class with timely final
17 wages;

18 G. Whether Defendants failed to maintain accurate employment records for
19 the Class members;

20 H. Whether Defendants engaged in unfair competition within the meaning of
21 Business and Professions Code sections 17200, et seq., with respect to the Class; and

22 I. Whether Class Members are entitled to restitution of money or property
23 that Defendants may have acquired from them through alleged Labor Code violations.

24 18. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
25 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
26 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
27 Code, the Wage Order, and the Business and Professions Code.

28 19. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
Members. Plaintiff will fairly and adequately represent and protect the interests of Class



Members.

20. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

21. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

IV. STATEMENT OF FACTS

22. The Wage Order applies to "all persons employed in an agricultural occupation whether paid on a time, piece rate, commission, or other basis" Wage Order, § 1. The Wage Order defines "employed in an agricultural occupation" to mean

- (1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;
- (2) The sowing and planting of any agricultural or horticultural commodity;
- (3) The care of any agricultural or horticultural commodity,; as used in this subdivision, "care" includes, but is not limited to, cultivation, irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;
- (4) The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;



- (5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;
- (6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing, handling eggs, and extracting honey;
- (7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;
- (8) The conservation, improvement or maintenance of such farm and its tools and equipment.

Wage Order, § 2(D). At all relevant times during the applicable limitations period, Defendants, Plaintiff and all of the other Class Members were covered by the Wage Order because the Defendants operated, and Plaintiff and all of the others Class Members worked for, one or more establishments operated as labor - agriculture employees, loaders, cutters, laborers, packers, and boxers. Accordingly, Plaintiff and all of the other Class Members are entitled to the protections the Wage Order provides.

23. In or around 2011, the Defendants began to employ Plaintiff in Imperial County in the position of loader, cutter, and laborer. The Defendants continuously employed him in that capacity until on or about June 3, 2021 when his employment ended.

24. At all relevant times, the Defendants issued wages to Plaintiff and all of the other Class Members on a daily basis and paid them by the hour, salary, commission, or piece rate. At all relevant times, the Defendants classified Plaintiff and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

25. At all relevant times, the Defendants failed to compensate Plaintiff and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. Defendants required Plaintiff and the Class Members to work four to six days a week and over eight hours per day. However, Defendants did not pay Plaintiff and the Class Members for about 2 and 1/2 hours per day Defendants required them to travel in Defendants' buses to and from their work sites. The buses were the only means of transportation to and from the worksites. Plaintiff and the Class Members could not travel in their own vehicles to and from the worksites.

26. At all relevant times, the Defendants failed to compensate Plaintiff and all of the other Class Members at the correct rates of pay for all hours worked over ten in a day, over 55 in



1 a week, and for the first eight hours of the seventh day of the workweek. As stated above,
2 Defendants required Plaintiff and the Class Members to travel off the clock in Defendants' buses
3 to and from their worksites. This extended their workdays over ten hours per day, but Defendants
4 did not pay Plaintiff and the Class Members premium overtime rates of 1 1/2 times their regular
5 rates of pay for the time they were working or otherwise under Defendants' control in excess of
6 ten hours per day.

7 27. At all relevant times, the Defendants failed to compensate Plaintiff and all of the
8 other Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over
9 the first eight of the seventh day of the workweek.

10 28. At all relevant times, the Defendants failed to provide Plaintiff and all of the other
11 Class Members with all timely 30-minute, off-duty meal periods. As stated above, Defendants
12 required Plaintiff and the Class Members to work through their meal periods and refused to release
13 them from work for their 30 minute meal periods. The Defendants also failed to pay premium
14 wages for days on which it failed to provide Plaintiff and all of the other Class Members with
15 meal periods as required by law.

16 29. At all relevant times, the Defendants failed to authorize and permit Plaintiff and
17 all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours
18 worked or major portion thereof. As stated above, Defendants required Plaintiff and the Class
19 Members to work through their rest breaks and refused to release them from work for their 10
20 minute rest breaks. The Defendants also failed to pay premium wages for days on which it failed
21 to authorize and permit Plaintiff and all of the other Class Members to take rest breaks as required
22 by law.

23 30. At all relevant times, Defendants failed to separately compensate Plaintiff and all
24 of the other Class Members for rest and recovery periods and other nonproductive time, including
25 but not limited to the time spent traveling on Defendants' buses, the time spent waiting for
26 machinery to shut off, and the time spent on related duties. Defendants paid Plaintiff and the Class
27 Members by a piece rate that did not separately compensate them for rest and recovery time and
28 other non-productive time, including the travel time discussed above.

31. At all relevant times, Defendants required Plaintiff and all of the other Class
Members to incur certain business expenses in the course of performing their duties. The
Defendants required Plaintiff and all of the other Class Members to use gloves, safety glasses,



1 braces, boots, and rain gear to perform their job duties. However, the Defendants did not provide
2 these items and did not reimburse Plaintiff and the other Class Members for purchasing these
3 items.

4 32. At all relevant times, the Defendants failed to issue to Plaintiff and all of the other
5 Class Members complete and accurate wage statements that state all hours worked at the correct
6 rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the
7 wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
8 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
9 earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages
10 earned, all rest break premium wages earned, gross wages earned, net wages earned, all hourly
11 rates, all hours work at each rate of pay, and related information.

12 33. At all relevant times, Defendants failed to provide Plaintiff and all of the other
13 Class Members with statements of the total hours of compensable rest and recovery periods, the
14 rate of compensation, and the gross and net wages paid for those activities during the pay period.
15 As stated above, Defendants paid Plaintiff and the Class Members by a piece rate that did not
16 separately compensate them for rest and recovery time and other non-productive time, including
17 the travel time discussed above. Defendants did not separately state in wage statements they
18 issued or other documents they issued to Plaintiff and the Class Members the amounts paid for
19 rest and recovery time and other nonproductive time, including travel.

20 34. At all relevant times, the Defendants also failed to timely pay Plaintiff and all of
21 the other Class Members all earned wages as described above during and at the conclusion of
22 employment.

23 35. At all relevant times, Defendants failed to maintain accurate employee records of
24 Plaintiff and all of the other Class Members.

25 36. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
26 unlawful practices and policies, Plaintiff and the Class Members were:

- 27 a) Not provided with all off duty meal periods;
- 28 b) Not authorized and permitted to take all rest break periods;
- c) Not paid one hour's pay for each workday in which Defendants failed to
authorize and permit them to take one or more timely rest periods;
- d) Not paid one hour's pay for each workday in which Defendants failed to



1 provide them with one or more timely meal periods;

2 e) Not paid all wages earned, including, but not limited to, minimum, regular,
3 overtime, and doubletime wages for work performed while clocked out;

4 f) Not indemnified for all necessary business expenditures incurred during
5 the discharge of their duties;

6 g) Not provided with accurate and complete wage statements; and

7 h) Not timely paid all earned and unpaid wages at the time their employment
8 ended.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE 11 CORRECT RATES**

12 **Lab. Code §§ 221, 226.2, 510, 1194, 1197, and 1198**

13 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

14 37. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 38. At all relevant times, Plaintiff and the Class Members have been non-exempt
16 employees entitled to the protections of both the Labor Code and the Wage Order.

17 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT** 18 **THE CORRECT RATES OF PAY**

19 39. Section 2 of the Wage Order defines “hours worked” as “the time during which an
20 employee is subject to the control of an employer, and includes all the time the employee is
21 suffered or permitted to work, whether or not required to do so.”

22 40. Section 3 of the Wage Order states:

23 (A) The following overtime provisions are applicable to employees eighteen
24 (18) years of age or over and to employees sixteen (16) or seventeen (17)
25 years of age who are not required by law to attend school:

26 (1) Such employees shall not be employed more than ten (10) hours in
27 any one workday or more than six (6) days in any workweek unless
28 the employee receives one and one-half (1 1/2) times such
employee’s regular rate of pay for all hours worked over ten (10)
hours in any workday and for the first eight (8) hours on the
seventh (7th) day of work and double the employee’s regular rate
of pay for all hours worked over eight (8) on the seventh (7th) day
of work in the workweek.





(2) For employers of more than 25 employees:

- (a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.
- (b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.
- (c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.
- (d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

(3) For employers of 25 or fewer employees:

- (a) Starting January 1, 2022, the overtime standards and compensation in subsection (2)(a) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.
- (b) Starting January 1, 2023, the overtime standards and compensation in subsection (2)(b) above, shall apply to any

employee who works over the specified threshold hours in any one workday or workweek.

(c) Starting January 1, 2024, the overtime standards and compensation in subsection (2)(c) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(d) Starting January 1, 2025, the overtime standards and compensation in subsection (2)(d) above, shall apply to any employee who works over the specified numbers of hours in any one workday or workweek.

...

(B) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6), subject to Labor Code Sections 510 and 550-556.

41. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

42. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

43. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

44. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.



1 45. Labor Code section 1198 makes it unlawful for an employer to employ an
2 employee under conditions that violate the Wage Order.

3 46. Defendants failed to pay Plaintiff and the Class Members at least the minimum
4 wage because Defendant required Plaintiff and the Class Members to work off-the-clock and did
5 not compensate them for this time.

6 47. In conjunction, these provisions of the Labor Code require employers to pay non-
7 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
8 worked, including unrecorded hours when the employer knew or reasonably should have known
9 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
10 Cal.4th 575, 585.)

11 48. At all relevant times during the applicable limitations period, Defendants failed to
12 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
13 minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
14 doubletime hours, respectively, that they worked at the correct rates of pay.

15 49. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
16 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
17 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
18 rates of pay as required by California law.

19 **B. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
20 **LABOR CODE**

21 50. In relevant part, Labor Code section 558.1 states:

- 22 (a) Any employer or other person acting on behalf of an employer,
23 who violates, or causes to be violated, any provision regulating
24 minimum wages or hours and days of work in any order of the
25 Industrial Welfare Commission, or violates, or causes to be
26 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
27 held liable as the employer for such violation.
- 28 (b) For purposes of this section, the term "other person acting on
behalf of an employer" is limited to a natural person who is an
owner, director, officer, or managing agent of the employer, and
the term "managing agent" has the same meaning as in subdivision
(b) of Section 3294 of the Civil Code.

51. At all relevant times, Defendant JOSE ANTONIO LOPEZ was an employer of



1 Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer”
2 of the Defendants and the other employers identified above. Defendant JOSE ANTONIO LOPEZ
3 directly or indirectly, or through an agent or other person, employed and exercised control over
4 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
5 the Labor Code and the Wage Order described above. On behalf of himself and all of the other
6 Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
7 liquidated damages, attorneys’ fees, costs, and related relief against Defendant JOSE ANTONIO
8 LOPEZ that is the same as the award of against the other Defendants on the same grounds for
9 which Plaintiff seeks against the Defendants.

10 **C. FAILURE TO PAY FOR REST AND RECOVERY PERIODS AND OTHER**
11 **NONPRODUCTIVE TIME**

12 52. In relevant part, Labor Code section 226.2 states

13 (a) For employees compensated on a piece-rate basis during a pay
14 period, the following shall apply for that pay period:

15 (1) Employees shall be compensated for rest and recovery
16 periods and other nonproductive time separate from any
17 piece-rate compensation.

18 ...

19 (3) (A) Employees shall be compensated for rest and
20 recovery periods at a regular hourly rate that is no less than
21 the higher of:

22 (i) An average hourly rate determined by
23 dividing the total compensation for the
24 workweek, exclusive of compensation for
25 rest and recovery periods and any premium
26 compensation for overtime, by the total
27 hours worked during the workweek,
28 exclusive of rest and recovery periods.

(ii) The applicable minimum wage.

53. At all relevant times during the applicable limitations period, the Defendants failed
to separately compensate Plaintiff and all of the other Class Members for rest and recovery periods
and other nonproductive time, including but not limited to, the time spent traveling on



1 Defendants' buses, the time spent waiting for machinery to shut off, and the time spent on related
2 duties. Defendants paid Plaintiff and the Class Members by a piece rate that did not separately
3 compensate them for rest and recovery time and other non-productive time, including the travel
4 time discussed above.

5 54. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
6 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
7 failure to pay Plaintiff and the other Class Members for rest and recovery periods and other
8 nonproductive time as required by California law.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

11 **Lab. Code §§ 226.7 and 1198**

12 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

13 55. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

14 56. At all relevant times during the applicable limitations period, Plaintiff and the
15 Class Members have been employees of Defendants and entitled to the benefits and protections
16 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

17 57. In relevant part, California Labor Code § 1198 states:

18 The maximum hours of work and the standard conditions of labor
19 fixed by the commission shall be the maximum hours of work and
20 the standard conditions of labor for employees. The employment
21 of any employee for longer hours than those fixed by the order or
22 under conditions of labor prohibited by the order is unlawful.

23 58. In relevant part, Section 12 of the Wage Order states:

24 Every employer shall authorize and permit all employees to take rest periods,
25 which insofar as practicable shall be in the middle of each work period. The
26 authorized rest period time shall be based on the total hours worked daily at the
27 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
28 However, a rest period need not be authorized for employees whose total daily
work time is less than three and one-half (3½) hours. Authorized rest period time
shall be counted, as hours worked for which there shall be no deduction from
wages.

59. In relevant part, California Labor Code § 226.7 states:



(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

60. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

61. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

62. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class Members for days on which they failed to authorize and permit Plaintiff and the other Class Members to take timely rest periods.

63. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed to authorize and permit them to take 10-minute rest periods every four hours worked or major fraction thereof.

64. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy



1 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
2 take all rest breaks required by California law.

3 65. Defendants failed to provide Plaintiff with all required rest breaks in accordance
4 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
5 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
6 which resulted in Defendants not providing the Class Members with all rest breaks required by
7 California law.

8 66. Defendants failed to pay Plaintiff the additional wages required by California
9 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
10 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
11 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
12 Class Members with additional wages for all rest breaks not provided to them as required by
13 California Labor Code § 226.7.

14 67. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
15 suffered damages in amounts subject to proof to the extent they were not paid additional wages
16 owed for all rest breaks not provided to them.

17 68. By reason of the above, Plaintiff and the Class Members are entitled to premium
18 wages for workdays in which one or more rest breaks were not provided to them pursuant to
19 California Labor Code § 226.7.

20 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
21 **LABOR CODE**

22 69. In relevant part, Labor Code section 558.1 states:

- 23 (a) Any employer or other person acting on behalf of an employer,
24 who violates, or causes to be violated, any provision regulating
25 minimum wages or hours and days of work in any order of the
26 Industrial Welfare Commission, or violates, or causes to be
27 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
28 held liable as the employer for such violation.
- (b) For purposes of this section, the term "other person acting on
behalf of an employer" is limited to a natural person who is an
owner, director, officer, or managing agent of the employer, and
the term "managing agent" has the same meaning as in subdivision
(b) of Section 3294 of the Civil Code.



1 a second meal period of not less than 30 minutes, except that if the
2 total hours worked is no more than 12 hours, the second meal
3 period may be waived by mutual consent of the employer and the
4 employee only if the first meal period was not waived.

5 75. In relevant part, Section 11 of the Wage Order states:

6 (A) An employer may not employ an employee for a work period of more than
7 five (5) hours without providing the employee with a meal period of not
8 less than 30 minutes, except that when a work period of not more than six
9 (6) hours will complete the day's work the meal period may be waived by
10 mutual consent of employer and employee. Unless the employee is
11 relieved of all duty during a 30 minute meal period, the meal period shall
12 be considered an "on duty" meal period and counted as time worked. An
13 "on duty" meal period shall be permitted only when the nature of the work
14 prevents an employee from being relieved of all duty and when by written
15 agreement between the parties an on-the-job paid meal period is agreed to.

16 (B) An employer may not employ an employee for a work period of more than
17 ten (10) hours per day without providing the —7 employee with a second
18 meal period of not less than 30 minutes, except that if the total hours
19 worked is no more than 12 hours, the second meal period may be waived
20 by mutual consent of the employer and the employee only if the first meal
21 period was not waived.

22 (See California Labor Code, Section 512)

23 76. In relevant part, California Labor Code § 226.7 states:

24 (b) An employer shall not require an employee to work during
25 a meal or rest period mandated pursuant to an applicable
26 statute, or applicable regulation, standard, or order of the
27 Industrial Welfare Commission, the Occupational Safety
28 and Health Standards Board, or the Division of
Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period
or rest period in accordance with a state law, including, but
not limited to, an applicable statute or applicable
regulation, standard, or order of the Industrial Welfare
Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one
additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest



period is not provided.

77. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

78. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. As stated above, Defendants required Plaintiff and the Class Members to work through their meal periods and refused to release them from work for their 30-minute meal periods.

79. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

80. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all off-duty meal periods required by California law.

81. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

82. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to California Labor Code § 226.7.

A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

83. In relevant part, Labor Code section 558.1 states:

- (c) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be



violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

- (d) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

84. At all relevant times, Defendant JOSE ANTONIO LOPEZ was an employer of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Defendant JOSE ANTONIO LOPEZ directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Defendant JOSE ANTONIO LOPEZ that is the same as the award of against the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code § 2802

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

85. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

86. In pertinent part, California Labor Code § 2802(a) states: “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

87. Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When 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.

Wage Order, § 9(A) and (B).

88. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

89. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties.

90. As described above, the Defendants required Plaintiff and all of the other Class Members to incur certain business expenses in the course of performing their duties. The Defendants required Plaintiff and all of the other Class members to supply gloves, safety glasses, braces boots, and rain gear to perform their job duties. However, the Defendants did not provide these items and did not reimburse Plaintiff and the other Class members for these items. Defendants required Plaintiff and the Class Members to use gloves, safety glasses, braces boots, and rain gear to perform to perform their job duties. Defendants did not reimburse Plaintiff and the Class Members for purchasing these items and Defendants did not provide Plaintiff and the Class Members with these items. Defendants failed to pay Plaintiff and the Class Members two times the hourly minimum wage for their work.

91. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

92. In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on



1 behalf of an employer” is limited to a natural person who is an
2 owner, director, officer, or managing agent of the employer, and
3 the term “managing agent” has the same meaning as in subdivision
 (b) of Section 3294 of the Civil Code.

4 93. At all relevant times, Defendant JOSE ANTONIO LOPEZ was an employer of
5 Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer”
6 of the Defendants and the other employers identified above. Defendant JOSE ANTONIO LOPEZ
7 directly or indirectly, or through an agent or other person, employed and exercised control over
8 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
9 the Labor Code and the Wage Order described above. On behalf of himself and all of the other
10 Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
11 liquidated damages, attorneys’ fees, costs, and related relief against Defendant JOSE ANTONIO
12 LOPEZ that is the same as the award of against the other Defendants on the same grounds for
 which Plaintiff seeks against the Defendants.

13 **FIFTH CAUSE OF ACTION**

14 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

15 **Lab. Code §§ 226 and 226.2**

16 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

17 94. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 95. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
19 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
 statement showing:

- 20 a) Gross wages earned;
- 21 b) Total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment of overtime under
23 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 24 c) The number of piece rate units earned and any applicable piece rate if the
25 employee is paid on a piece-rate basis;
- 26 d) All deductions, provided that all deductions made on written orders of the
27 Employee may be aggregated and shown as one item;
- 28 e) Net wages earned;
- f) The inclusive dates of the period for which the employee is paid;



1 g) The name of the employee and his or her social security number, except
2 that by January 1, 2008, only the last four digits of his or her social security number or an
3 employee identification number other than a social security number may be shown on the
4 itemized statement;

5 h) The name and address of the legal entity that is the employer and, if the
6 employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and
7 address of the legal entity that secured the services of the employer; and

8 i) All applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each hourly rate by the employee.

10 Lab.Code § 266(a).

11 96. Pursuant to California Labor Code § 226, an employee is deemed to suffer
12 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
13 injury if the employer fails to provide accurate and complete information as required by California
14 Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage
15 statement alone one or more of the following:

16 A. The amount of the gross wages or net wages paid to the employee during
17 the pay period or any of the other information required to be provided on the itemized wage
18 statement pursuant to California Labor Code § 226(a);

19 B. Which deductions the employer made from gross wages to determine the
20 net wages paid to the employee during the pay period;

21 C. The name and address of the employer and, if the employer is a farm labor
22 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
23 and address of the legal entity that secured the services of the employer during the pay period;

24 D. The name of the employee and only the last four digits of his or her social
25 security number or an employee identification number other than a social security number; and

26 E. The number of piece-rate units earned and the piece rate.

27 97. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
28 means a reasonable person would be able to readily ascertain the information without reference
to other documents or information.

98. As alleged herein, at all relevant times during the applicable limitations period,
Defendants violated California Labor Code section 226 because they did not properly and



1 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
2 the corresponding number of hours worked at each rate by the employee and other requirements
3 of California Labor Code section 226. Defendants failed to state in the wage statements they
4 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
5 including, but not limited to, regular and overtime wages for work they performed off-the-clock
6 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
7 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
8 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
9 Members that state all minimum wages earned, all regular wages earned, all overtime wages
10 earned, all doubletime wages earned, all meal period premium wages earned, all rest break
11 premium wages earned, gross wages earned, net wages earned, all hourly rates, and all hours work
12 at each rate of pay.

12 99. Defendants' failure to provide Plaintiff and the other Class Members with accurate
13 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
14 the other Class Members with accurate wage statements but intentionally provided wage
15 statements that Defendants knew were not accurate.

16 100. Similarly, section 7(C) of the Wage Order states:

17 Every employer shall semimonthly or at the time of each payment of wages
18 furnish each employee, either as a detachable part of the check, draft, or voucher
19 paying the employee's wages, or separately, an itemized statement in writing
20 showing:

- 21 (1) all deductions;
- 22 (2) the inclusive dates of the period for which the employee is paid;
- 23 (3) the name of the employee or the employee's social security number; and
- 24 (4) the name of the employer, provided all deductions made on written orders
25 of the employee may be aggregated and shown as one item.

26 This information shall be furnished either separately or as a detachable part of the
27 check, draft, or voucher paying the employee's wages.

28 101. As a result of being provided with inaccurate wage statements by Defendants,
Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate



1 wage statements were violated and they were misled about the amount of wages they had actually
2 earned and were owed. In addition, the absence of accurate information on their wage statements
3 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
4 and mathematical computations to determine the amounts of wages owed, has caused difficulty
5 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
6 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
7 and the other Class Members were not able to ascertain from the wage statements whether
8 Defendants complied with their obligations under California Labor Code section 226(a).

9 **A. FAILURE TO PROVIDE WAGE STATEMENTS WITH REST AND RECOVERY**
10 **TIME**

11 102. Labor Code section 226.2 states

12 (a) For employees compensated on a piece-rate basis during a pay
13 period, the following shall apply for that pay period:

14 ...

15 (2) The itemized statement required by subdivision (a) of
16 Section 226 shall, in addition to the other items specified
17 in that subdivision, separately state the following, to which
18 the provisions of Section 226 shall also be applicable:

19 (A) The total hours of compensable rest and recovery periods,
20 the rate of compensation, and the gross wages paid for those
21 periods during the pay period.

22 103. As a matter of policy and practice, the Defendants failed to provide Plaintiff and
23 all of the other Class Members with statements of the total hours of compensable rest and recovery
24 periods, the rate of compensation, and the gross wages paid for those activities during the pay
25 period.

26 **B. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
27 **LABOR CODE**

28 104. In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer,
who violates, or causes to be violated, any provision regulating
minimum wages or hours and days of work in any order of the



Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

105. At all relevant times, Defendant JOSE ANTONIO LOPEZ was an employer of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Defendant JOSE ANTONIO LOPEZ directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Defendant JOSE ANTONIO LOPEZ that is the same as the award of against the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

SIXTH CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

(Lab. Code §§ 201, 202, and 203)

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

106. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

107. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201, 202, and 203, and the Wage Order.

108. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

109. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.



1 110. The Defendants failed to pay Plaintiff and all of the other Class Members whose
2 employment ended all of the earned but unpaid wages described above by the conclusion of their
3 employment with Plaintiff, including minimum wages, regular wages, overtime wages,
4 doubletime wages, unprovided meal period premium wages, and unprovided rest break premium
5 wages.

6 111. By failing to pay such earned wages to Plaintiff and the Class Members,
7 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
8 § 201 or § 202.

9 112. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
10 and the Class Members all of their earned and unpaid wages (described above) have been willful
11 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
12 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
13 they have had the ability to comply with those legal requirements.

14 113. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of
15 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
16 penalties for each Class Member.

17 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
18 **LABOR CODE**

19 114. In relevant part, Labor Code section 558.1 states:

- 20 (a) Any employer or other person acting on behalf of an employer,
21 who violates, or causes to be violated, any provision regulating
22 minimum wages or hours and days of work in any order of the
23 Industrial Welfare Commission, or violates, or causes to be
24 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
25 held liable as the employer for such violation.
- 26 (b) For purposes of this section, the term "other person acting on
27 behalf of an employer" is limited to a natural person who is an
28 owner, director, officer, or managing agent of the employer, and
the term "managing agent" has the same meaning as in subdivision
(b) of Section 3294 of the Civil Code.

115. At all relevant times, Defendant JOSE ANTONIO LOPEZ was an employer of
Plaintiff and all of the other Class Members, and/or "owner," "managing agent," and/or "officer"
of the Defendants and the other employers identified above. Defendant JOSE ANTONIO LOPEZ



1 directly or indirectly, or through an agent or other person, employed and exercised control over
2 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
3 the Labor Code and the Wage Order described above. On behalf of himself and all of the other
4 Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
5 liquidated damages, attorneys' fees, costs, and related relief against Defendant JOSE ANTONIO
6 LOPEZ that is the same as the award of against the other Defendants on the same grounds for
7 which Plaintiff seeks against the Defendants.

8 **SEVENTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

10 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

11 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

12 116. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

13 117. At all relevant times during the applicable limitations period, Plaintiff and the
14 other Class Members have been employees of Defendants and entitled to the benefits and
15 protections of the Business and Professions Code §§ 17200, *et seq.*

16 118. The unlawful conduct of Defendants alleged herein amounts to and constitutes
17 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
18 *seq.* Due to their unfair and unlawful business practices as alleged herein, Defendants have
19 unfairly gained a competitive advantage over other comparable companies doing business in
20 California that comply with their legal obligations to, among other things, pay their employees
21 premium wages for workdays in which they did not provide employees with one or more meal
22 and rest periods, pay them all earned wages for all regular and overtime hours worked, and
23 reimburse Plaintiff and the Class Members for business expenses incurred on Defendants' behalf.
24 Defendants' unfair competitive advantage also includes the financial gains that resulted from
25 deducting at least 30 minutes from the work time Plaintiff and the Class Members had worked
26 per day.

27 119. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
28 Class Members are entitled to restitution of all monies rightfully belonging to them that
Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
practices.

120. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in



connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

121. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

122. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning March 30, 2020, and ending on the date that final judgment is entered in this action.

123. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

124. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,



1 Plaintiff alleges that Defendants also failed to pay the aggrieved employees on such intervals for
2 all wages earned and all hours worked.

3 125. During the applicable time period, Defendants violated California Labor Code §§
4 201, 202, 203, 204, 221, 226.2, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

5 126. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
6 behalf of themselves and other current or former employees, to bring a civil action to recover civil
7 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

8 127. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
9 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
10 §§ 201, 202, 203, 204, 221, 226.2, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the
11 applicable limitations period in the following amounts:

12 A. For violations of California Labor Code § 204, one hundred dollars
13 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
14 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully
15 withheld from each aggrieved employee for each subsequent, willful or intentional violation
16 (penalty amounts established by California Labor Code § 210).

17 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
18 (\$250.00) for each aggrieved employee for initial violation and one thousand dollars (\$1,000.00)
19 for each aggrieved employee for each subsequent violation (penalty amounts established by
20 California Labor Code § 226.3).

21 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
22 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
23 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
24 established by California Labor Code § 558).

25 D. For violations of California Labor Code § 1197, one hundred dollars
26 (\$100.00) for each aggrieved employee for each initial and intentional violation and two hundred
27 fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation, per pay period
28 (regardless of whether the initial violations were intentionally committed), in addition to an
amount sufficient to recover unpaid wages (penalty amounts established by California Labor
Code § 1197.1).

E. For violations of California Labor Code §§ 201, 202, 203, 226.2, 226.7,



1 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period
2 for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
3 period for each subsequent violation (penalty amounts established by California Labor Code §
4 2699(f)(2)).

5 F. For violations of California Labor Code § 221, one hundred dollars
6 (\$100.00) for each Aggrieved Employee for each initial and intentional violation (if found to be
7 neither willful nor intentional) and \$200 for each aggrieved employee for each initial violation of
8 California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent
9 violation of California Labor Code § 221 (regardless of whether they are found to be either willful
10 or intentional) (penalties set by California Labor Code § 225.5).

11 128. Plaintiff has complied with the procedures for bringing suit specified in California
12 Labor Code § 2699.3. By letter dated August 30, 2021, Plaintiff filed written notice online with
13 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
14 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
15 violated, including the facts and theories to support the alleged violations. A true and correct copy
16 of Plaintiff’s written notice to the LWDA dated August 30, 2021, is attached as **Exhibit A**.
17 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
18 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
19 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
20 does not intend to investigate these allegations.

21 129. Pursuant to California Labor Code § 2699(g), Plaintiff and the aggrieved
22 employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
23 connection with their claims for civil penalties.

24 **V. PRAYER FOR RELIEF**

25 130. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
26 relief and judgment against Defendants as follows:

- 27 A. An order that the action be certified as a class action with respect to
28 Plaintiff’s claims for violations of California law;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages, including minimum, regular, overtime, double-time, split



1 shift, missed meal period, missed rest period, nonproductive time, rest and recovery time, and
2 reporting time wages;

- 3 E. Liquidated damages;
- 4 F. Statutory penalties, including waiting time penalties;
- 5 G. Civil Penalties;
- 6 H. Restitution;
- 7 I. Declaratory relief;
- 8 J. Actual damages;
- 9 K. Pre-judgment interest;
- 10 L. Costs of suit;
- 11 M. Reasonable attorneys' fees; and
- 12 N. Such other relief as the Court deems just and proper.

13 **VI. DEMAND FOR JURY TRIAL**

14 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
15 on all issues so triable.

16 Respectfully submitted,

THE SPIVAK LAW FIRM

17 Dated: November 16, 2021

By: _____

DAVID G. SPIVAK,
SARA BROWN
Attorneys for Plaintiff, FRANCISCO
RODRIGUEZ, and all others similarly
situated



EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

August 30, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Francisco Rodriguez / Jett Harvest

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Francisco Rodriguez (hereafter “Rodriguez” or “Complainant”) provides notice that Jett Harvest, Inc., Prime AG Services Inc., Jose Antonio Lopez, and related entities (collectively “the Jett Harvest Employers” or “the Employers”) violated his rights and those of all other individuals the Jett Harvest Employers have employed or otherwise contracted with in California as hourly and piece rate, non-exempt workers, including but not limited to labor - agriculture employees, loaders, cutters, laborers, packers, and boxers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Rodriguez hereby provides this notice to the Labor & Workforce Development Agency and the Jett Harvest Employers and their agents and representatives.

At all relevant times, the Jett Harvest Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies,

throughout California. Rodriguez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 14-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately 2011, the Jett Harvest Employers began to employ Rodriguez in Imperial County in the position of loader, cutter, and laborer. The Jett Harvest Employers continuously employed him in that capacity until on or about June 3, 2021 when his employment ended.

At all relevant times, the Jett Harvest Employers issued wages to Rodriguez and all of the other Aggrieved Employees on a daily basis and paid them by the hour, salary, commission, or piece rate. At all relevant times, the Jett Harvest Employers classified Rodriguez and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Jett Harvest Employers failed to compensate Rodriguez and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Jet Harvest Employers required Rodriguez and the Aggrieved Employees to work four to six days a week and over eight hours per day. However, the Jet Harvest Employers did not pay Rodriguez and the Aggrieved Employees for about 2 ½ hours per day the Jett Harvest Employers required them to travel in the Jett Harvest Employers' buses to and from their work sites. The buses were the only means of transportation to and from the worksites. Rodriguez and the Aggrieved Employees could not travel in their own vehicles to and from the worksites. The Jet Harvest Employers also required Rodriguez and the Aggrieved Employees to wait an additional 5 to 30 minutes after their scheduled end time for the work machines to shut down and for all employees to board the bus without compensation.

The Jett Harvest Employers failed to compensate Rodriguez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over ten in a day, over 55 in a week, and for the first eight hours of the seventh day of the workweek. As stated above, the Jett Harvest Employers required Rodriguez and

the Aggrieved Employees to travel off the clock in the Jett Harvest Employers' buses to and from their worksites. This extended their workdays over ten hours per day, but the Jett Harvest Employers did not pay Rodriguez and the Aggrieved Employees premium overtime rates of 1 1/2 times their regular rates of pay for the time they were working or otherwise under the Jett Harvest Employers' control in excess of ten hours per day.

At all relevant times, the Jett Harvest Employers failed to provide Rodriguez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. As stated above, the Jet Harvest Employers required Rodriguez and the Aggrieved Employees to work through their meal periods and refused to release them from work for their 30 minute meal periods. The Jett Harvest Employers also failed to pay premium wages for days on which it failed to provide Rodriguez and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Jett Harvest Employers failed to authorize and permit Rodriguez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. As stated above, the Jet Harvest Employers required Rodriguez and the Aggrieved Employees to work through their rest breaks and refused to release them from work for their 10 minute rest breaks. The Jett Harvest Employers also failed to pay premium wages for days on which it failed to authorize and permit Rodriguez and all of the other Aggrieved Employees to take rest breaks as required by law.

The Jett Harvest Employers failed to separately compensate Rodriguez and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time, including but not limited to , and related duties. The Jett Harvest Employers paid Rodriguez and the Aggrieved Employees by a piece rate that did not separately compensate them for rest and recovery time and other non-productive time, including the travel time discussed above.

At all relevant times, the Jett Harvest Employers required Rodriguez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Jett Harvest Employers required Rodriguez and all of the other Aggrieved Employees to supply and comparable items to perform their job duties. However, the Jett Harvest Employers did not provide these items and did not reimburse Rodriguez and the other Aggrieved

Employees for these items. The Jet Harvest Employers required Rodriguez and the Aggrieved Employees to use gloves, safety glasses, braces, boots, and rain gear to perform their job duties. The Jet Harvest Employers did not reimburse Rodriguez and the Aggrieved Employees for purchasing these items and the Jet Harvest Employers did not provide Rodriguez and the Aggrieved Employees with these items. The Jet Harvest Employers failed to pay Rodriguez and the Aggrieved Employees two times the hourly minimum wage for their work.

At all relevant times, the Jett Harvest Employers failed to issue to Rodriguez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Jett Harvest Employers knowingly and intentionally failed to state on the wage statements they issued to Rodriguez and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, gross wages earned, net wages earned, all hourly rates, and all hours work at each rate of pay.

The Jett Harvest Employers failed to provide Rodriguez and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross and net wages paid for those activities during the pay period. As stated above, the Jett Harvest Employers paid Rodriguez and the Aggrieved Employees by a piece rate that did not separately compensate them for rest and recovery time and other non-productive time, including the travel time discussed above. The Jett Harvest Employers did not separately state in wage statements they issued or other documents they issued to Rodriguez and the Aggrieved Employees the amounts paid for rest and recovery time and other nonproductive time, including travel.

The Jett Harvest Employers also failed to timely pay Rodriguez and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Jett Harvest Employers failed to maintain accurate employee records of Rodriguez and all of the other Aggrieved Employees.

For the reasons stated herein, Rodriguez alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Jett Harvest Employers failed to pay Rodriguez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Jett Harvest Employers failed to separately compensate Rodriguez and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time;
- (c) The Jett Harvest Employers failed to provide Rodriguez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (d) The Jett Harvest Employers failed to authorize and permit Rodriguez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (e) The Jett Harvest Employers failed to compensate Rodriguez and all of the other Aggrieved Employees at one hour's pay for each day in which the Jett Harvest Employers failed to provide them with one or more meal periods as required by law;
- (f) The Jett Harvest Employers failed to compensate Rodriguez and all of the other Aggrieved Employees at one hour's pay for each day in which the Jett Harvest Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (g) The Jett Harvest Employers failed to indemnify Rodriguez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

- (h) The Jett Harvest Employers knowingly and intentionally failed to provide Rodriguez and all of the other Aggrieved Employees with accurate wage statements;
- (i) The Jett Harvest Employers failed to provide Rodriguez and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period;
- (j) The Jett Harvest Employers willfully failed to timely pay Rodriguez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Jett Harvest Employers and when their employment ended; and
- (k) The Jett Harvest Employers failed to maintain accurate employment records pertaining to Rodriguez and all of the other Aggrieved Employees.

Accordingly, Rodriguez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Jett Harvest Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in an agricultural occupation whether paid on a time, piece rate, commission, or other basis." Wage Order, §

1. The Wage Order defines "employed in an agricultural occupation" to mean,

- (1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;
- (2) The sowing and planting of any agricultural or horticultural commodity;
- (3) The care of any agricultural or horticultural commodity,; as used in this subdivision, "care" includes, but is not limited to, cultivation,

irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;

- (4) The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;
- (5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;
- (6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing, handling eggs, and extracting honey;
- (7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;
- (8) The conservation, improvement or maintenance of such farm and its tools and equipment.

Wage Order, § 2(D).

At all relevant times during the applicable limitations period, the Jett Harvest “Employers, Rodriguez, and all of the Aggrieved Employees were covered by the Wage Order because Rodriguez and all of the Aggrieved Employees worked for the Jett Harvest Employers as labor - agriculture employees, loaders, cutters, laborers, packers, and boxers, and similar occupations. Accordingly, Rodriguez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

- (A) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school:
 - (1) Such employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.
 - (2) For employers of more than 25 employees:
 - (a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.
 - (b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.
 - (c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours

per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

- (d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

- (3) For employers of 25 or fewer employees:

- (a) Starting January 1, 2022, the overtime standards and compensation in subsection (2)(a) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.
- (b) Starting January 1, 2023, the overtime standards and compensation in subsection (2)(b) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.
- (c) Starting January 1, 2024, the overtime standards and compensation in subsection (2)(c) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.
- (d) Starting January 1, 2025, the overtime standards and compensation in subsection (2)(d) above, shall apply

to any employee who works over the specified numbers of hours in any one workday or workweek.

...

- (B) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6), subject to Labor Code Sections 510 and 550-556.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Jet Harvest Employers required Rodriguez and the Aggrieved Employees to work four to six days a week and over eight hours per day. However, the Jet Harvest Employers did not pay Rodriguez and the Aggrieved Employees for about 2 and 1/2 hours per day the Jett Harvest Employers required them to travel in the Jett Harvest Employers' buses to and from their work sites. The buses were the only means of transportation to and from the worksites. Rodriguez and the Aggrieved Employees could not travel in their own vehicles to and from the worksites. The Jet Harvest Employers also required Rodriguez and the Aggrieved Employees to wait an additional 5 to 30 minutes after their scheduled end time for the work machines to shut down and for all employees to board the bus without compensation.

As stated above, the Jett Harvest Employers required Rodriguez and the Aggrieved Employees to travel off the clock in the Jett Harvest Employers' buses to and from their worksites. This extended their workdays over ten hours per day, but the Jett Harvest Employers did not pay Rodriguez and the Aggrieved Employees premium overtime rates of 1 1/2 times their regular rates of pay for

the time they were working or otherwise under the Jett Harvest Employers' control in excess of ten hours per day.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Jett Harvest Employers, Rodriguez and all of the other Aggrieved Employees earned bonuses, commissions, awards, monetary incentives, rest period premium wages, meal period premium wages, and related compensation during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Jett Harvest Employers, Rodriguez failed to pay to Rodriguez and all of the other Aggrieved Employees bonuses, commissions, awards, monetary incentives, rest period premium wages, meal period premium wages overtime and double time premium pay on such bonuses, commissions, awards, monetary incentives, rest period premium wages, meal period premium wages, and related compensation.

At all relevant times during the applicable limitations period, the Jett Harvest Employers failed to compensate Rodriguez and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Rodriguez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each

subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Pay for Rest and Recovery Periods and Other Nonproductive Time
(Lab. Code § 226.2)

In relevant part, Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.
...
 - (3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:

- (i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.
- (ii) The applicable minimum wage.

At all relevant times during the applicable limitations period, the Jett Harvest Employers failed to separately compensate Rodriguez and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time, including but not limited to , and related duties. The Jett Harvest Employers paid Rodriguez and the Aggrieved Employees by a piece rate that did not separately compensate them for rest and recovery time and other non-productive time, including the travel time discussed above. Accordingly, Rodriguez seeks civil penalties on behalf of himself and all of the other Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, subdivisions (a)(1) and (a)(4) and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, section 11 of the Wage Order states:

- (A) An employer may not employ an employee for a work period of more than five (5) hours without providing the employee with a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the —7 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

(See California Labor Code, Section 512)

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Jett Harvest Employers failed to provide Rodriguez and all of the other Aggrieved Employees with all timely meal periods. The Jett Harvest Employers denied Rodriguez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. As stated above, the Jet Harvest Employers required Rodriguez and the Aggrieved Employees to work through their meal periods and refused to release them from work for their 30 minute meal periods. Furthermore, the Jett Harvest Employers failed to pay premium wages for days on which they failed to provide Rodriguez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Rodriguez now seeks civil penalties for these Labor Code violations that the Jett Harvest Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each

subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));

2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 12 of the Wage Order provides, in relevant part:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half

(3½) hours. Authorized rest period time shall be counted, as hours worked for which there shall be no deduction from wages.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.
- (d) A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

The Jett Harvest Employers failed to authorize and permit Rodriguez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Jett Harvest Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. As stated above, the Jet Harvest Employers required Rodriguez and the Aggrieved Employees to work through their rest breaks and refused to release them from work for their

10 minute rest breaks. Moreover, the Jett Harvest Employers failed to pay Rodriguez and all of the other Aggrieved Employees premium wages on workdays the Jett Harvest Employers failed to provide Rodriguez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Rodriguez now seeks civil penalties for these Labor Code violations that the Jett Harvest Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
...
- (B) When 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.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Jett Harvest Employers required Rodriguez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Jett Harvest Employers required Rodriguez and all of the other Aggrieved Employees to supply and similar items to perform their job duties. However, the Jett Harvest Employers did not provide these items and did not reimburse Rodriguez and the other Aggrieved Employees for these items. The Jet Harvest Employers required Rodriguez and the Aggrieved Employees to use braces, rain gear, boots, safety glasses and gloves to perform their job duties. The Jet Harvest Employers did not reimburse Rodriguez and the Aggrieved Employees for purchasing these items and the Jet Harvest Employers did not provide Rodriguez and the Aggrieved Employees with these items. The Jet Harvest Employers failed to pay Rodriguez and the Aggrieved Employees two times the hourly minimum wage for their work. The Jett Harvest Employers did not provide tools to Rodriguez and the other Aggrieved Employees it required them to use to perform their work, nor did they reimburse them for such tools, including gloves, safety glasses, braces, boots, rain gear and similar items. Accordingly, Rodriguez seeks civil penalties for these Labor Code violations that the Jett Harvest Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Similarly, section 7(C) of the Wage Order states

Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee's social security number; and
- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

At all relevant times during the applicable limitations period, the Jett Harvest Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Jett Harvest Employers failed to state in the wage statements they issued to Rodriguez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Jett Harvest Employers knowingly and intentionally failed to state on the wage statements they issued to Rodriguez and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, gross wages earned, net wages earned, all hourly rates, and all hours work at each rate of pay and similar

information. Accordingly, Rodriguez seeks civil penalties for the Labor Code violations that the Jett Harvest Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Provide Wage Statements with Rest and Recovery Time
(Lab. Code § 226.2)

Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

...

- (2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

- (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

Labor Code section 2699.3(c) allows employers the chance to “cure” violations of provisions not listed under 2699.5 within 33 days of the postmark date of the aggrieved employee’s written notice to the LWDA. Section 226.2 is not a provision listed under 2699.5.

Labor Code section 2699(d) states,

For purposes of this part, “cure” means that the employer abates each violation alleged by any aggrieved employee, the employer is

in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole.

Labor Code section 2699.3(c)(B)(ii) limits this right to once in a 12-month period. After the employer cures the violation, it must give written notice, along with a description of actions taken, by certified mail to the aggrieved employee or representative and the agency within the 33-day period.

The Jett Harvest Employers failed to provide Rodriguez and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those activities during the pay period. Accordingly, Rodriguez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Jett Harvest Employers failed to compensate Rodriguez and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, and unprovided rest break premium wages, at the intervals stated above. As a result, the Jett Harvest Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204.

Accordingly, Rodriguez now seeks civil penalties for the Labor Code violations that the Jett Harvest Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Jett Harvest Employers failed to pay Rodriguez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Rodriguez, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and similar forms of compensation. By failing to pay Rodriguez and all of the other Aggrieved Employees as set forth above at the end of employment, the

Jett Harvest Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Rodriguez seeks civil penalties from the Jett Harvest Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee, including the following:
- (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which, operations cease and authorized rest periods need not be recorded.
 - (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

...

- (E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Jett Harvest Employers failed to compensate Rodriguez and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, gross wages earned, net wages earned, all hourly rates, and all hours work at each rate of pay. As a result, the Jett Harvest Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Rodriguez and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Rodriguez seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

- 1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Jose Antonio Lopez was an employer of Rodriguez and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the Jett Harvest Employers and the other employers identified above. Jose Antonio Lopez directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Rodriguez seeks the same civil penalties against Jose Antonio Lopez on the same grounds for which he seeks civil penalties against the Jett Harvest Employers.

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Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Francisco Rodriguez will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



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cc: Francisco Rodriguez
Walter Haines, Esq.

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