

Rodolfo Ruiz-Velasco, Esq. (SBN 265364)
RUIZ-VELASCO LAW FIRM
600 W. Broadway Suite 700
San Diego, CA 92101
Tel: (619) 800-5293
Fax: (619) 399-7047

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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Amy Woolf, Deputy Clerk

Attorneys for Plaintiffs JUAN OLIVERA and RENE OLIVARES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

JUAN OLIVERA, an individual; and RENE
OLIVARES, an individual,

Plaintiffs,

v.

TWINS FAMILY FARM, CORP., a California
Corporation; JOSE ANTONIO MENDOZA,
individually and doing business as TWINS
FLOWER GROWERS & SHIPPERS; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2021-00047371-CU-OE-NC

COMPLAINT FOR DAMAGES:

1. FAILURE TO PAY WAGES
2. FAILURE TO TIMELY FURNISH
ACCURATE ITEMIZED WAGE
STATEMENTS
3. UNFAIR BUSINESS PRACTICES
4. MEAL AND REST PERIOD
VIOLATIONS
5. WAITING TIME PENALTIES
6. EMPLOYEE FILE & PAYROLL
RECORDS VIOLATIONS
7. FAILURE TO REIMBURSE
8. PRIVATE ATTORNEYS GENERAL
ACT OF 2004 ("PAGA") PER LABOR
CODE §2699, et seq.

[IMAGED FILE]

Plaintiffs JUAN OLIVERA and RENE OLIVARES, both individuals (hereinafter “Plaintiffs”) allege as follows:

GENERAL ALLEGATIONS

The public policy of California declares:

It is the public policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions or for employers that have not secured the payment of compensation and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

(Labor Code §90.5 subd. (a).)

Despite this clear mandate, DEFENDANTS blatantly violated the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders. Defendants willfully failed to pay mandated minimum wage and overtime wage compensation and sick pay wages, failed to fully relieve their employees of their duties during their meal and rest periods, failed to reimburse their employees for all business expenses incurred, and failed to provide and maintain proper employee records to their employees.

1. This lawsuit is brought in response to the Defendants' refusal to pay Plaintiffs and the other aggrieved employees, who are current and former employees of Defendants, all wages that they earned during their employment with Defendants, among other Labor Code violations.

2. The acts complained of herein have occurred within the time period from four (4) years preceding the filing of the original Complaint herein (hereinafter, the “Relevant Time Period”).

JURISDICTION AND VENUE

3. The Superior Court of the State of California for the County of San Diego has jurisdiction over this case due to the fact that some of the alleged violations (a) of California

1 Labor Code (i.e. §§ 200 et seq.), (b) California Business and Professions Code §§ 17200 *et seq.*
2 and (c) related common law violations occurred in the County of San Diego.

3 4. Venue is proper in the North County Division of San Diego County Superior
4 Court pursuant to Code of Civil Procedure §395(a) and §395.5, because *inter alia*, (a) the
5 Defendants' and Defendant corporation's principal place of business is situated in this County,
6 and (b) complaints regarding such issues may be filed in the North County Division.

7
8 **PARTIES**

9 5. Plaintiff JUAN OLIVERA is an individual over the age of eighteen (18) and has
10 been an employee of Defendants during the last 4 years.

11 6. Plaintiff RENE OLIVARES is an individual over the age of eighteen (18) and has
12 been an employee of Defendants during the last 4 years.

13 7. Plaintiffs are informed and believe that Defendant TWINS FAMILY FARM,
14 CORP. is a California Corporation, and at all times mentioned herein operated its businesses
15 within the jurisdiction of this Court.

16 8. Plaintiffs are informed and believe that Defendant JOSE ANTONIO MENDOZA
17 is an individual who at all times mentioned in this Complaint herein resided within the
18 jurisdiction of this Court and who during the relevant time period owned and operated and is
19 individually doing business as TWINS FLOWERS GROWERS & SHIPPERS (San Diego
20 County Fictitious Business Name Document Number 2018-9010744). Defendant JOSE
21 ANTONIO MENDOZA has owned, managed and operated and continues to own, manage and
22 operate Defendant TWINS FAMILY FARM, CORP., and who at all times mentioned in this
23 Complaint herein resided within the jurisdiction of this Court. Defendant JOSE ANTONIO
24 MENDOZA at all times mentioned in this Complaint has violated and/or caused to violate
25 various Labor Code sections and other provisions regulating hours and days of work established
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1 by the Industrial Welfare Commission of the State of California by underpaying Plaintiffs and
2 the other aggrieved employees (“wage theft”), failing to fully relieve them of their duties during
3 their meal and rest periods, failing to reimburse business expenditures, and failing to provide and
4 maintain accurate wage statements and time records, thus rendering him further individually
5 liable. Defendant JOSE ANTONIO MENDOZA was and remains a person acting on behalf of
6 Defendant TWINS FAMILY FARM, CORP., on information and belief as the chief executive
7 officer, secretary, chief financial officer, and director of TWINS FAMILY FARM, CORP., who
8 violated and/or who caused to violate various Labor Code sections and other provisions
9 regulating hours and days of work established by the Industrial Welfare Commission of the State
10 of California rendering him individually liable pursuant to Labor Code Sections 558, 558.1, and
11 2699 et. seq. In addition, JOSE ANTONIO MENDOZA is an officer, director, and person acting
12 either individually or as a managing agent, who paid or caused to be paid the Plaintiffs and the
13 other aggrieved employees a wage less than the minimum and overtime rate of pay under the
14 law, failed to pay vacation pay, and sick pay wages, failed to reimburse business expenses, failed
15 to relieve them of duties during their meal an rest periods, and failed to provide accurate records,
16 or by an order of the commission and is therefore subject to a civil penalty, restitution of wages
17 payable to the employee, and any applicable wages, damages and penalties imposed pursuant to
18 Labor Sections 203, 558, 558.1, and 2699 et. seq.

21
22 9. DOES 1 to 50, inclusive are now, and/or at all times mentioned in this Complaint
23 were licensed to do business and/or actually doing business in the State of California. Plaintiffs
24 do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to
25 50, inclusive and for that reason, DOES 1 to 50 are sued under such fictitious names pursuant to
26 California Code of Civil Procedure (“CCP”) §474. Plaintiffs will amend this Complaint to allege
27 such names and capacities as soon as they are ascertained.
28

1 10. Plaintiffs are informed and believe and thereon alleges that DOES 1 to 50,
2 inclusive, are former co-employers and/or joint employers of Plaintiffs.

3 11. Plaintiffs are informed and believe and thereon alleges that DOES 1 to 50,
4 inclusive, are successors in interest to Defendants or are otherwise obligated to pay Plaintiffs the
5 wages due and owing to them, e.g. by way of statute, common law, quantum meruit, express
6 written contract, implied in fact contract, or by way of common counts such as money had and
7 received. Plaintiffs reserve the right to augment the foregoing allegations to more clearly set
8 forth this Defendants' liability as discovery progresses and reveals the same.

9
10 12. Plaintiffs are informed and believe, and based upon such information and belief
11 alleges that the Defendants, and each of them, are now and/or at all times mentioned in this
12 Complaint were in some manner legally responsible for the events, happenings and
13 circumstances alleged in this Complaint.

14
15 13. Plaintiffs are further informed and believe, and based upon such information and
16 belief allege, that at all times herein mentioned, all Defendants, and each of them, were and are
17 the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants,
18 and were, at all such times, acting within the course and scope of said employment and/or
19 agency; furthermore, that each and every Defendants herein, while acting as a high corporate
20 officer, director and/or managing agent, principal and/or employer, expressly directed, consented
21 to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as
22 herein alleged and was responsible in whole or in part for the matters referred to herein.

23
24 14. Plaintiffs are further informed and believe, and based upon such information and
25 belief allege, that at all times herein mentioned, Defendants, and each of them, proximately
26 caused Plaintiffs to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
27 damages alleged in this Complaint.

1 15. Plaintiffs are further informed and believe, and based upon such information and
2 belief alleges, that at all times herein mentioned, Defendants, and each of them were co-
3 employers and/or joint employers of Plaintiffs.

4 16. Defendants, and each of them, are now and/or at all times mentioned in this
5 Complaint were members of and/or engaged in a joint venture, partnership and common
6 enterprise, and were acting within the course and scope of, and in pursuit of said joint venture,
7 partnership and common enterprise and, as such were co-employers and/or joint employers of
8 Plaintiffs.

9 17. Defendants, and each of them, at all times mentioned in this Complaint concurred
10 with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified the
11 various acts and omissions of each and every one of the other Defendants in proximately causing
12 the complaints, injuries and/or damages alleged in this Complaint.

13 18. Plaintiffs are informed and believes and thereon allege that at all times herein
14 mentioned, some of the Defendants DOES 1 through 50, Inclusive, were the *alter egos* of the
15 named Defendants. Plaintiffs are informed and believe and thereon allege that there exists such a
16 unity of interest and ownership between the named Defendants and DOES 1 through 50, that the
17 individuality and separateness of the named Defendants and DOES 1 through 50 has ceased to
18 exist. The business affairs of named Defendants and DOES 1 through 50, are, and at all times
19 relevant hereto were, so mixed and intermingled that the same cannot reasonably be segregated,
20 and the same are in inextricable confusion. Defendants, and at all times relevant hereto, used
21 each other as a mere shell and conduit for the conduct of certain of Defendants' affairs. The
22 recognition of the separate existence of Defendants would not promote justice, in that it would
23 permit Defendants to insulate themselves from liability to Plaintiffs. Accordingly, the named

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1 Defendants constitute the *alter ego* of Defendants DOES 1 through 50, and the fiction of their
2 separate existence must be disregarded.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES**

5 **(Against all Defendants)**

6
7 19. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
8 section as though fully set forth herein.

9 20. Plaintiffs were each an “employee” of Defendants (as defined by section 350 of
10 the Labor Code) but Defendants failed to pay Plaintiffs and the other aggrieved employees for all
11 hours worked. Plaintiffs were employed as flower packing laborers.

12 21. Pursuant to Labor Code section 1197, payment of less than the minimum wage
13 fixed by the commission is unlawful.

14 22. During the entire period of time that Plaintiffs and the other aggrieved employees
15 were employed by Defendants, and for the four (4) years preceding the filing of this lawsuit,
16 Defendants were required to compensate them at least at the minimum wage, but failed to carry
17 out their duties and responsibilities as an employer imposed under the laws and regulations of the
18 State of California and violated the law by failing to pay Plaintiffs and the other aggrieved
19 employees a minimum wage for all hours worked pursuant to all applicable wage orders and in
20 accordance with Labor Code sections 200, 226, 500, 510, 558.1, 1194, 1194.2, and 1197.

21 23. Defendants regularly failed to pay Plaintiffs and the other aggrieved employees
22 all of the wages that they earned. Specifically, Defendants have intentionally failed to pay
23 Plaintiffs and the other aggrieved employees for all hours worked (“wage theft”), where
24 Defendants shave time worked by Plaintiffs and the aggrieved employees and do not pay for all
25 hours worked even though they regularly work over 8 hours per day and/or 40 hours per week,
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1 causing them to not receive at least the minimum wage for all of their hours worked. For
2 instance, Plaintiffs and the other aggrieved employees regularly were required to work on
3 average at least 90 to 105 hours per week and more close to holidays for which they were only
4 paid a salary of on average \$750 to \$800 per week. This clearly does not cover at least the
5 minimum wage, much less the overtime rate.
6

7 24. In violation of state law, Defendants have knowingly and willfully refused to
8 perform their obligations to compensate Plaintiffs and the other aggrieved employees for all
9 minimum wages earned and all hours worked. As a direct result, Plaintiffs and the other
10 aggrieved employees have suffered, and continue to suffer, substantial losses related to the use
11 and enjoyment of such unpaid wages, lost interest on such wages, costs and attorneys' fees in
12 seeking to compel Defendants to fully perform their obligations under state law, all to their
13 damage in amounts according to proof at the time of trial, but in amounts in excess of the
14 minimum jurisdiction requirement of this Court. Defendants committed the acts alleged herein
15 knowingly and willfully, with wrongful and deliberate intent.
16

17 25. Defendants' conduct described herein violates Labor Code sections 200, 226, 500,
18 510, 558, 558.1, 1194, 1194.2, and 1197. As a proximate result of the aforementioned
19 violations, Plaintiffs and the other aggrieved employees have been damaged in an amount
20 according to proof at the time of trial, but in an amount in excess of the minimum jurisdiction
21 requirement of this Court. Therefore, pursuant to Labor Code sections 200, 203, 226, 558,
22 558.1, 1194, 1194.2, 1197, and 1197.1, Plaintiffs are therefore entitled to recover the unpaid
23 balance of wages Defendants owe Plaintiffs and the other aggrieved employees, plus interest,
24 penalties, liquidated damages, attorneys' fees, expenses, and costs of suit.
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1 26. Pursuant to Labor Code §200, “wages” includes all amounts for labor performed
2 by employees of every description, whether the amount is fixed or ascertained by the standard of
3 time, task, piece, commission basis, or other method of calculation.

4 27. Plaintiffs are thus entitled to their earned unpaid wages in an amount to be proven
5 at trial, plus interest, penalties, attorneys’ fees and costs.

6 28. Under California law, including but not limited to, Labor Code sections 200, 226,
7 500, 510, 558, 558.1, and 1198, Defendants were required to compensate Plaintiffs and the other
8 aggrieved employees for all overtime, which is calculated at one and one-half (1.5) times the
9 regular rate of pay for hours worked in excess of forty (40) per week or after eight (8) in one day,
10 and double time (2) times the regular rate of pay for hours worked on the seventh consecutive
11 work day, or after twelve (12) hours in any workday.

12 29. Throughout their employment with Defendants, Plaintiffs regularly worked over
13 40 hours per week and over 8 hours per day, at least five days per week. Plaintiffs and the other
14 aggrieved employees are or were non-exempt employees entitled to overtime pay under
15 California law, including but not limited to Labor Code sections 200, 226, 500, 510, 558, 558.1,
16 and 1198. Throughout Plaintiffs’ employment, Defendants regularly failed to pay Plaintiffs and
17 the other aggrieved employees at the overtime wage rate for all of their overtime hours worked,
18 paying them nothing at all for their overtime hours worked (see above).

19 30. Under the applicable wage orders, statutes and regulations, Plaintiffs and the other
20 aggrieved employees are entitled to one and one-half (1.5) times and double their regular rate of
21 pay for overtime work performed during the entire course of their employment with Defendants.

22 31. As a direct result, Plaintiffs and the other aggrieved employees have suffered
23 substantial losses related to the use and enjoyment of such wages, lost interest on such wages,
24 and expenses and attorneys’ fees in seeking to compel Defendants to fully perform its obligation
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1 under state law, all to their respective damage in amounts according to proof at the time of trial,
2 but in amounts in excess of the jurisdiction of this Court. Defendants committed the acts alleged
3 herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiffs,
4 from improper motives amounting to malice, and in conscious disregard of Plaintiffs' rights.
5 Plaintiffs are thus entitled to recover nominal, actual, compensatory damages in amounts
6 according to proof at the time of trial, but in amounts in excess of the jurisdiction of this Court.
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8 32. Defendants' conduct described herein violates Labor Code sections 200, 226, 500,
9 510, 558, 558.1, 1194, and 1197.1. As a proximate result of the aforementioned violations,
10 Plaintiffs and the other aggrieved employees have been damaged in an amount according to
11 proof at the time of trial, but in an amount in excess of the jurisdiction of this Court. Therefore,
12 pursuant to Labor Code sections 200, 203, 226, 558, 558.1, and 1194, Plaintiffs and the other
13 aggrieved employees are entitled to recover the unpaid balance of overtime compensation
14 Defendants owe to Plaintiffs and the other aggrieved employees, plus interest, penalties,
15 attorneys' fees, expenses, and costs of suit.
16

17 33. All accrued and earned vacation pay must be paid as wages at the time of
18 termination of an employee and earned vacation may not be forfeited by an employer pursuant to
19 Labor Code Sections 201, 202, 203, 227, and 227.3, and applicable Wage Orders.
20

21 34. Plaintiffs and the other aggrieved employees earned vacation pay per Defendants'
22 vacation pay policy that was not taken by the employee or paid by Defendants at the time of
23 separation. Defendants willfully failed to pay Plaintiffs and the other aggrieved employees their
24 earned vacation at the time of separation of their employment from Defendants. By Defendants'
25 failure to timely pay accrued vacation pay wages to Plaintiffs and the other aggrieved employees,
26 Defendants willfully violated the provisions of Labor Code Sections 201, 202, 203, 227, and
27 227.3, and applicable Wage Orders.
28

1 35. An employer must pay its employees sick leave pursuant to Labor Code Section
2 246, et seq. Defendants failed to pay for sick pay leave in violation of Labor Code Section 246,
3 et seq. Therefore, Plaintiffs are entitled to unpaid sick pay leave in an amount to be proven at
4 trial, plus interest, penalties, attorneys' fees and costs.
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6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO TIMELY FURNISH**

8 **ACCURATE ITEMIZED WAGE STATEMENTS**

9 **(Pursuant to Labor Code §226(a) and (e))**

10 **(Against all Defendants)**

11 36. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
12 section as though fully set forth herein.
13

14 37. Plaintiffs are informed and believe and thereon allege that Defendants, in
15 violation of Labor Code §226(a), engaged in a practice of regularly failing to furnish him with
16 accurate, itemized statements in writing showing (1) all gross wages earned, (2) all deductions,
17 (3) net wages earned, (4) accurate rate of pay, and (5) all hours worked during each respective
18 pay period that Plaintiffs have worked for Defendants, as well as all other information required
19 by section 226 of the Labor Code. Specifically, Defendants failed to provide wage statements to
20 Plaintiffs and the other aggrieved employees showing the above required information,
21 particularly because Defendants regularly failed to pay all earned wages and record all worked
22 hours by Plaintiffs and the other aggrieved employees.
23

24 38. Plaintiffs seek damages pursuant to Labor Code §226(e) for each violation by
25 Defendants of Labor Code §§ 226, 226.3, and pursuant to § 558.1, plus attorneys' fees and costs.
26 In addition, Plaintiffs seek preliminary and permanent injunctive relief pursuant to Labor Code
27 §226(h).
28

39. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this section as though fully set forth herein.

40. Defendants have engaged in unfair business practices in California by utilizing and engaging in an unlawful pattern and practice of failing to properly pay employee compensation as described throughout this Complaint, specifically, by requiring the Plaintiffs and the other aggrieved employees to perform the work without proper payment of overtime, regular, minimum, and vacation and sick pay earned, without meal and rest periods, illegal deductions, and failed to pay and report proper taxes to the US and California governments. Defendants' use of such practices constitutes a statutorily illegal, and thus, unfair business practice and provides an unfair advantage over Defendants' competitors.

41. Plaintiffs seek full restitution by Defendants as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair business practices complained of herein.

42. Plaintiffs seek the appointment of a receiver, as necessary, to oversee said restitution, including all wages earned and unpaid, including interest thereon.

43. The acts complained of herein, occurred, at least in part, within the last 4 years preceding this Complaint for Damages.

44. Further, if Defendants are not enjoined from the unlawful conduct described above, Defendants will continue unabated in its unlawful conduct, which will continue to result in irreparable injury to members of the general public, including, but not limited to Plaintiffs and

1 the other aggrieved employees, who are current and former employees of the Defendants, and for
2 which there is no adequate remedy at law. Thus, Plaintiffs request that the Court issue a
3 preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing
4 conduct.

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6 **FOURTH CAUSE OF ACTION**

7 **MEAL AND REST PERIOD VIOLATIONS**

8 **LABOR CODE §§ 226.7 and 512**

9 **(Against all Defendants)**

10 45. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
11 section as though fully set forth herein.

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13 46. Under California Labor Code sections 226.7, 512 and California Wage Orders,
14 Off Duty Meal Periods of 30 minutes are required for all non-exempt employees who work at
15 least 5 hours in a shift, except that when a work period of not more than 6 hours will complete
16 the day's work then the meal period may be waived by mutual consent of the employer and
17 employee. Time records of meal periods must be kept except that meal periods during which
18 operations cease need not be recorded. Employers must provide non-exempt employees 2 Off
19 Duty Rest Periods of 10 minutes each in a normal 8 hour shift. Rest Periods need not be
20 recorded. The Meal Periods are unpaid unless the employee is not fully relieved of all duties.
21 Rest Periods must be paid. An employer who fails to provide off duty meal and rest periods
22 (breaks) must pay the employee an additional 1 hour regular pay for each category of break not
23 provided in a work day.
24

25
26 47. At all times mentioned herein, Defendants violated Labor Code sections 226.7
27 and 512 by refusing to allow Plaintiffs and the other aggrieved employees to be fully relieved of
28 their duties during their meal and rest periods.

1 48. Accordingly, Plaintiffs and the other aggrieved employees seek damages available
2 pursuant to the Labor Code, including but not limited to Labor Code sections 226.7, 512, 558,
3 and 558.1.
4

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES UPON SEPARATION OF EMPLOYMENT**

7 **WAITING TIME PENALTIES PURSUANT TO LABOR CODE §203**

8 **(Against all Defendants)**

9 49. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
10 section as though fully set forth herein.
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12 50. Defendants failed to pay Plaintiffs and the other aggrieved employees all earned
13 wages upon the separation of their employment with Defendants in violation of Labor Code
14 sections 201 and 202, including but not limited to, overtime, minimum, and regular wages, and
15 meal and rest period premium wages, vacation and sick pay, and despite their several demands to
16 be paid.
17

18 51. Defendants' failure to pay Plaintiffs and the other aggrieved employees all wages
19 due was willful and done with malice. Plaintiffs and the other aggrieved employees are therefore
20 entitled to penalties pursuant to Labor Code section 203, 558, 558.1, plus attorneys' fees and
21 costs.
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1 **SIXTH CAUSE OF ACTION**

2 **EMPLOYEE FILE & PAYROLL RECORDS VIOLATIONS**

3 **LABOR CODE §§ 1198.5, 432, 226(b), (c), and (f)**

4 **(Against all Defendants)**

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6 52. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
7 section as though fully set forth herein.

8 53. On or about July 21, 2021, Plaintiff RENE OLIVARES, through his counsel,
9 requested in writing and via certified US mail, that Defendants provide a copy of certain
10 documents in his employee file and payroll and time records. Defendants failed to timely furnish
11 Plaintiff RENE OLIVARES with a copy of his full employee file and payroll and time records in
12 violation of Labor Code §§432, and 226(b),(c), (f), and 1198.5; IWC Orders 1 through 15,
13 Section 7, and IWC Order 16, Section 6. Plaintiffs are entitled to recover any and all penalties
14 and compensation provided by the Labor Code, including the above mentioned sections and
15 section 558.1, for Defendants' failure to furnish the requested personnel and payroll and time
16 records including at least a \$750.00 penalty pursuant to LC §§226(f) and 1198.5, plus attorneys'
17 fees and costs.
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20 54. Pursuant to Labor Code §1174(d), Defendants have a legal obligation to "[k]eep,
21 at a central location in the state or at the plants or establishments at which employees are
22 employed, payroll records showing the hours worked daily by and the wages paid to, and the
23 number of piece-rate units earned by and any applicable piece rate paid to, employees employed
24 at the respective plants or establishments."
25

26 55. Defendants failed to maintain records of Plaintiffs' and the other aggrieved
27 employees' accurate hours worked which Defendants were required to keep pursuant to Labor
28

1 Code §1174(d). Therefore, Defendants violated Labor Code §1174(d) by failing to collect and
2 keep records indicating the daily hours worked by Plaintiffs and the other aggrieved employees.

3
4 56. Pursuant to Labor Code §1174.5, “any person employing labor who willfully fails
5 to maintain... accurate and complete records required by subdivision (d) of Section 1174... shall
6 be subject to a civil penalty of five hundred dollars (\$500).” Accordingly, Defendants are
7 required to pay Plaintiffs and the other aggrieved employees an additional \$500.00 each along
8 with consequential damages, fees and costs.

9
10 **SEVENTH CAUSE OF ACTION**

11 **FAILURE TO REIMBURSE**

12 **(Against All Defendants)**

13 57. Plaintiffs re-allege and incorporates herein by reference all paragraphs outside this
14 section as though fully set forth herein.

15
16 58. Pursuant to Labor Code §2802(a), an employer shall indemnify his or her
17 employee for all necessary expenditures or losses incurred by the employee in direct
18 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
19 the employer.

20
21 59. Defendants required Plaintiffs and the other aggrieved employees to incur
22 expenditures for the benefit of the Defendants including but not limited to purchase tools,
23 equipment and inventory in the discharge of their daily duties. Defendants, however, failed to
24 reimburse Plaintiffs and the other aggrieved employees for such expenditures.

25
26 60. Therefore, pursuant to Labor Code §2802(c) Plaintiffs are entitled to recover
27 reimbursement for all necessary expenditures for purchases of tools, equipment, and inventory
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1 and other business expenditures incurred in discharge of their daily duties for Defendants, plus
2 interest, penalties, attorneys' fees, expenses, and costs of suit.

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4 **EIGHTH CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")**

6 **PER LABOR CODE §2699, et seq.**

7 **(Against All Defendants)**

8 61. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
9 section as though fully set forth herein.

10
11 62. On or about August 23, 2021, pursuant Labor Code sections 2699(a) and 2699.3,
12 Plaintiffs, through their counsel, provided notice in writing by online submission to the
13 California Labor Workforce Development Agency ("LWDA") and via certified US Mail to
14 Defendants and each of them, that Plaintiffs intended to assert a PAGA claim pursuant to section
15 2699(a) on their own behalf, and in a representative capacity on behalf of other aggrieved
16 employees of Defendants, for Defendants' violations of specified provisions of the California
17 Labor Code. See Exhibit 1 attached to this Complaint. The LWDA did not respond within 65
18 days.
19

20 63. As a result, Plaintiffs have perfected their right to sue Defendants in a civil action,
21 and to collect statutory penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1) on behalf of
22 all aggrieved employees (PAGA Employees).
23

24 64. As a result of the acts alleged above, Plaintiffs bring this action on their own
25 behalf, and in a representative capacity on behalf of other current or former aggrieved employees
26 (PAGA Employees), for penalties pursuant to California Labor Code section 2699 for
27 Defendants' violations of the enumerated Labor Code sections, including, but not limited to
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1 sections 200, 201, 202, 203, 210, 216, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227,
2 227.3, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1197.1, 1198, 1198.5, 1199,
3 and 2802.

4
5 65. Pursuant to California Labor Code section 2699, Plaintiffs and PAGA Employees
6 are entitled to be awarded twenty-five (25%) percent of all penalties due under California law, in
7 addition to interest, attorney's fees and costs.

8
9 66. The Court should award seventy-five (75%) percent of all penalties due under
10 California law to the State of California.

11 67. Plaintiffs and PAGA Employees therefore seek to recover from Defendants, and
12 each of them, allowable damages, penalties, interest, costs, and attorneys' fees, in an amount
13 according to proof at trial, in accordance with Labor Code sections 2699, *et seq.*

14
15 68. Labor Code Section 558 states that “[a]ny employer or *other person* acting on
16 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
17 provision regulating hours and days of work in any order of the Industrial Welfare Commission
18 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
19 each underpaid employee for each pay period for which the employee was underpaid in addition
20 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
21 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
22 was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages
23 recovered pursuant to this section shall be paid to the affected employee. The Section goes on to
24 state that “[t]he civil penalties provided for in this section are in addition to any other civil or
25 criminal penalty provided by law.”

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69. Labor Code Section 558.1(a) provides in pertinent part: “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.”

70. Defendants violated/violate, or caused/causes to be violated, multiple sections of the Labor Code as well as provisions regulating hours and days of work in any order of the Industrial Welfare Commission including those requiring payment of minimum and regular wages and payment of overtime wages, meal and rest periods, records, and reimbursement of business expenses, as set forth in detail throughout this Complaint.

71. Accordingly, Plaintiffs are also entitled to recovery of wages, premium wages, damages, and penalties pursuant to Labor Code Sections 558 and 558.1.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, jointly and severally, as follows:

1. For compensatory damages pursuant to Labor Code §§ 200, 201, 202, 203, 218, 221, 222, 223, 224, 225.5, 226, 226.7, 227, 227.3, 246, 350-356, 500, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197.1, 1198, 1198.5, 2802, et seq., and other statutes and laws;
2. For pre-judgment interest pursuant to Labor Code §§218.6, et seq. and Civil Code §§ 3287(b) and 3289 and other statutes and laws;
3. For penalties pursuant to Labor Code §§ 203, 225.5, 226, 226.7, 350-356, 512, 558, 558.1, 1174.5, 1194.2, 1197.1, 1198.5, 2802, 2699, set seq., and other statutes and laws;
4. For injunctive relief pursuant to Labor Code §226(h);
5. For an award of reasonable attorneys' fees and costs;

1 6. For restitution of all monies due to Plaintiffs and disgorged profits from the unlawful
2 business practices of Defendants;

3 7. For all remedies available pursuant to Business and Professions Code section 17200 et
4 seq.;

5 8. For all other appropriate injunctive, declaratory and equitable relief;

6 9. For interest to the extent permitted by law; and

7 10. For such other and further relief as the Court may deem proper.

8 Dated: November 8, 2021

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11 Rodolfo Ruiz-Velasco, Esq.
12 Attorneys for Plaintiffs,
13 JUAN OLIVERA, and RENE OLIVARES
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EXHIBIT 1

RUIZ-VELASCO LAW FIRM

August 23, 2021

Via Electronic Submission

California Labor & Workforce Development Agency

Attn. PAGA Administrator

455 Golden Gate Avenue, 9th Floor

San Francisco, CA 94102

By Certified Mail:

Mr. Jose Antonio Mendoza

Twins Flower Growers & Shippers

Twins Family Farm, Corp.

2580 Pioneer Ave #F

Vista, CA 92081

Via Email (sam@tencersherman.com; connie@tencersherman.com)

San G. Sherman

Tencer Sherman

12520 High Bluff Drive, Suite 230

San Diego, CA 92130

Re: **Olivera, et al. v. Twins Family Farm, Corp., et al.**
Notice of PAGA Action

To Whom It May Concern:

We represent Juan Olivera and Rene Olivares individually and on behalf of all other aggrieved employees (collectively “Plaintiffs”), who are either former or current employees of Twins Family Farm, Corp. and/or Twins Flower Growers & Shippers, and owner, officer and director, Jose Antonio Mendoza (collectively, “Defendants”). Pursuant to Labor Code Section 2699.3, this letter constitutes written notice of Defendants’ Labor Code violations and of our clients’ intent to recover statutory penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). A copy of this letter is also being sent to Defendants via certified mail, and their counsel via email.

Defendants employed Plaintiffs as flower packing laborers. Plaintiffs are regularly required to work over 8 hours per day and/or over 40 hours in a week, without receiving at least their minimum wage compensation for all hours worked, and without

receiving overtime pay for overtime hours worked (“wage theft”). For instance, Plaintiffs Olivera and Olivares and the other aggrieved employees regularly have been required to work on average at least 90 to 105 hours per week, and more during or near holidays, but were only paid a \$750 to \$800 salary per week for their work. In addition, Defendants do not pay their employees for their sick pay and owe Plaintiffs vacation pay. This wage theft does not cover at least the minimum wage and does not cover the requisite overtime wages at the overtime rate.

Defendants failed to provide Plaintiffs with paycheck statements with accurate hours worked, rate of pay, and all wages earned, and failed to pay federal and state payroll taxes, social security contributions, workers compensation insurance, and unemployment and disability contributions in violation of federal and California state laws, and of Labor Code sections 226, 226.3, and the Wage Orders. Defendants also failed to keep accurate time records of Plaintiffs, in violation of Section 7 of the Wage Orders. Further, Defendants failed to provide Plaintiff Olivares with his employee file and records in response to his written request for records in violation of Labor Code sections 226, 1198.5, and 432.

Plaintiffs were not paid all of their wages owed at the time of their termination of work in violation of LC Sections 203 and 204.

In addition, Defendants failed to fully relieve Plaintiffs from their meal and rest periods and to pay them any premiums for their on-duty meal and rest periods. Specifically, Plaintiffs are not allowed by Defendants to be fully relieved of their duties during their meal and rest periods, and even if they were allowed, they are not able to because they would not complete their required tasks in time.

Defendants require Plaintiffs to incur expenditures by requiring them to purchase tools and inventory to perform their duties for Defendants, however, Defendants fail to reimburse Plaintiffs for these business expenditures in violation of LC Section 2802. For instance, Defendants required Plaintiffs Olivera and Olivares to purchase sharp knives with hooks, where they were required to incur at least about \$400 each in sharp knives with hooks purchases, and were required to purchase at least \$5,000 in flowers for which they were not reimbursed.

The payment of a less wage than the California minimum wage and minimum wage violations, including failure to pay split shift premiums, are unlawful pursuant to Labor Code Sections 1197, 1197.1, 1194, 558, 558.1. Overtime compensation is

statutorily required by California Labor Code Sections 510, 558, 558.1, 1194, 1198. Meal and rest periods are required pursuant to Labor Code Sections 226.7, 512, 558, 558.1. Sick pay wages are required pursuant to Labor Code Section 246, et seq. Failure to reimburse for expenses incurred in the course of one's employment is a violation of Labor Code Section 2802, et seq. Accurate wage statements must be timely given to employees pursuant to Labor Code Sections 226, 226.3. Failure to maintain proper time records is a violation of Wage Order Section 7. Failure to pay accrued vacation is in violation of LC 227 and 227.3. Illegal deductions are in violation of LC Sections 220, 221, 222, 223, 224, et seq. Failure to provide the employee file and records in response to a written request for records is in violation of Labor Code sections 226, 1198.5, and 432. Defendants' employment practices implicate violations of numerous other Labor Code sections, including but not limited to the following: Labor Code §§ 98.6, 201, 202, 203, 204, 225.5, 226.7, 227, 227.3, 510, 512, 558, 558.1, 1102.5, 1194, 1194.2, 1197.1, 2810, 2810.3, et seq., and 2698, et seq.

Accordingly, Plaintiffs respectfully request that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Plaintiffs will pursue these claims for statutory penalties on behalf of themselves and all other current and former aggrieved employees.

If you have any questions or concerns regarding the above, do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Rodolfo Ruiz-Velasco', with a stylized, flowing script.

Rodolfo Ruiz-Velasco, Esq.