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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

MARTIN VELASCO, as an individual, on
behalf of himself and others similarly situated;
BALTAZAR LOPEZ, as an individual, on
behalf of himself and others similarly situated,

Plaintiffs,

vs.

SUN PACIFIC FARMING COOPERATIVE,
INC., and DOES 1 - 25,

Defendants.

CASE NO. BCV-21-101897-BCB

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Wages Under Labor Code §§ 510, 1194, and 1199;
2. Failure to Provide/Compensate for Mandated Rest Periods Pursuant to Labor Code § 226.7 and IWC Wage Order 14;
3. Failure to Provide Meal Periods Pursuant to Labor Code §§ 226.7 and 512/Failure to Keep Accurate Records of Meal Periods Pursuant to IWC Wage Order 14;
4. Failure to Reimburse for Vehicle Expenses Pursuant to Labor Code § 2802;
5. Waiting Time Penalties Pursuant to Labor Code § 203;
6. Failure to Keep Accurate Information and Provide Accurate Itemized Wage Statements Pursuant Labor Code § 226

- and IWC Wage Order 14;
7. Unfair Competition Pursuant to Bus. & Prof. Code § 17200;
 8. Penalties Pursuant to Labor Code §2699, et seq.

Plaintiffs MARTIN VELASCO, on behalf of himself as an individual, all others similarly situated, and BALTAZAR LOPEZ, on behalf of himself as an individual, all others similarly situated (“PLAINTIFFS”), and on behalf of the people of the State of California and as an “aggrieved employee” under Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter “PAGA”), complains of Defendant SUN PACIFIC FARMING COOPERATIVE, INC. (“DEFENDANT”) and each of them, as follows:

I.

INTRODUCTION

1. This is a Class and Representative Action, pursuant to Code of Civil Procedure § 382, and Labor Code §2699, et seq., on behalf of PLAINTIFFS and a Proposed Class defined as:

All persons who are employed or have been employed by SUN PACIFIC FARMING COOPERATIVE, INC., in the State of California who worked one or more shifts as a harvest worker since four (4) years prior to the filing of this action to the present. (“Proposed Class”)

2. Any limitations period referenced in this complaint is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 16 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this complaint is extended into the past by the number of days in which this tolling was in effect.

3. DEFENDANT is engaged in the business of cultivating, harvesting and packing vegetables and fruit, including mandarins.

1 4. The cultivation and harvesting took place on land located primarily in or near Kern
2 County, California.

3 5. PLAINTIFFS are seasonal agricultural workers who have worked in
4 DEFENDANT’S fields, for DEFENDANT, either directly or through various Farm Labor
5 Contractors (“FLC”).

6 6. For at least four (4) years prior to the filing of this action and continuing to the
7 present, DEFENDANT has had a consistent policy of failing to pay for all hours worked by all
8 Proposed Class members. PLAINTIFFS and other Proposed Class members were not properly
9 compensated for all hours worked because DEFENDANT required PLAINTIFFS and members of
10 the Proposed Class to work off the clock. DEFENDANT failed to compensate PLAINTIFFS and
11 the Proposed Class for the time PLAINTIFFS and the Proposed Class spent waiting pre-shift
12 before work began. PLAINTIFFS and the Proposed Class would often arrive to their designated
13 mandarin fields and were told by DEFENDANT to wait to begin work. PLAINTIFFS and the
14 Proposed Class would frequently arrive between 7-8:00am and wait until 10-11:00am to begin
15 work. DEFENDANT failed to record or compensate PLAINTIFFS and the Proposed Class for this
16 waiting time in contravention of California Labor Code section 1194 and IWC Wage Order 14.
17 Further, DEFENDANT failed to compensate PLAINTIFFS and the Proposed Class for the time
18 spent post-shift putting away and storing PLAINTIFFS’ and the Proposed Class members’ work
19 equipment. Additionally, DEFENDANT required PLAINTIFFS and the Proposed Class to start
20 work at one field in the morning before travelling to a different field by foot or in PLAINTIFFS’
21 vehicles and the Proposed Class members’ own cars during the work day. DEFENDANT failed
22 to record the travel time and failed to compensate PLAINTIFFS and the Proposed Class for this
23 travel time. As a result, PLAINTIFFS and the Proposed Class were not properly compensated for
24 all hours worked at the appropriate rate of pay.

25 7. For at least four (4) years prior to the filing of this action and continuing to the
26 present, DEFENDANT has had a consistent policy of failing to inform Proposed Class members
27 of their right to take rest periods by way of a lawful policy and of failing to provide Proposed Class
28 members within the State of California, including PLAINTIFFS, rest periods of at least ten (10)

1 minutes per four (4) hours worked or major fraction thereof and failing to pay such employees one
2 (1) hour of pay at the employee's regular rate of compensation for each workday that the rest
3 period was not provided, as required by California state wage and hour laws.

4 8. From at least four (4) years prior to the filing of this action and continuing to the
5 present, DEFENDANT has had a consistent policy of failing to inform Proposed Class members
6 of their right to take meal periods by way of a lawful policy and failing to provide Proposed Class
7 members a meal period within the first five (5) hours of work. DEFENDANT has had consistent
8 policy of failing to pay PLAINTIFFS and Proposed Class members one (1) hour of pay at the
9 employees' regular rate of pay for each workday that a meal period was not provided, was not
10 provided in full, or was not provided in a timely manner, as required by California state wage and
11 hour laws.

12 9. From at least four (4) years prior to the filing of this action and continuing to the
13 present, DEFENDANT has had a consistent policy of failing to inform Proposed Class members
14 of their right to take second meal periods by way of a lawful policy and requiring all Proposed
15 Class members to work at least ten (10) hours without a second meal period. DEFENDANT has
16 had failed to pay such employees one (1) hour of pay at the employees' regular rate of
17 compensation for each workday that a compliant second meal period is not provided or provided
18 after ten (10) hours, as required by California state wage and hour laws.

19 10. For at least four (4) years prior to the filing of this action and continuing to the
20 present, DEFENDANT has failed to reimburse PLAINTIFFS and the Proposed Class for their
21 mileage and/or vehicle expenses. Specifically, PLAINTIFFS and the Proposed Class are required
22 by DEFENDANT to travel between fields to perform work tasks. DEFENDANT did not provide
23 busses or other transportation to workers so that they could travel from field to field in the middle
24 of their shifts and, as a result, PLAINTIFFS and the Proposed Class members were required to use
25 their own vehicles to travel from field to field. As such, PLAINTIFFS and the Proposed Class are
26 required to work without being reimbursed for their necessary business expenses.

27 11. For at least three (3) years prior to the filing of this action continuing to the present,
28 DEFENDANT has failed to pay all wages due at the time of termination or resignation to

1 PLAINTIFFS and the Proposed Class.

2 12. For at least one (1) year prior to the filing of this action continuing to the present,
3 DEFENDANT has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order
4 14-2001 and Labor Code§ 226(a) by failing to issue accurate itemized wage statements that show
5 the total hours worked, start and end time of each shift, the timing in relation to meal periods, and
6 gross wages earned by PLAINTIFFS and the Proposed Class.

7 13. PLAINTIFFS, on behalf of themselves and all Proposed Class members brings this
8 action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199,
9 2802, and 2810.3; Wage Order 14-2001; and California Code of Regulations, Title 8, Section
10 11140, seeking unpaid wages and/or overtime; meal and rest period penalties; accurate itemized
11 wage statements, unreimbursed expenses, waiting time penalties; injunctive and other equitable
12 relief; and reasonable attorneys’ fees and costs.

13 14. PLAINTIFFS, on behalf of themselves and all Proposed Class members, pursuant
14 to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
15 disgorgement of all benefits DEFENDANT enjoyed from its unlawful conduct as described herein.

16 15. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
17 and Development Agency (“LWDA”) and DEFENDANT giving notice of the claims pursuant to
18 PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph
19 2 above, DEFENDANT has violated Labor Code provisions, as detailed below, giving rise to a
20 claim pursuant to PAGA. PLAINTIFFS, on behalf of themselves and all aggrieved employees
21 presently or formerly employed by DEFENDANT during the liability period as defined in their
22 PAGA notice letter (*see* Exhibit “1”), bring this representative action pursuant to Labor Code
23 §2699, et seq. seeking penalties for DEFENDANT’S failure to pay all wages and/or overtime,
24 failure to provide lawful meal periods, failure to provide lawful rest periods, failure to provide
25 accurate itemized wage statements, failure to reimburse expenses, and failure to pay all wages due
26 at the time of termination.

27 II.

28 JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

17. This Court has personal jurisdiction over DEFENDANT because DEFENDANT has caused injuries in the County of Kern and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

18. Venue as to this DEFENDANT is proper in this judicial district, pursuant to Code of Civil Procedure § 395. DEFENDANT operates within California and does business within Kern County. The unlawful acts alleged herein have a direct effect on PLAINTIFFS within the State of California and the county of Kern.

19. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

III.

PARTIES

A. PLAINTIFFS

20. PLAINTIFFS are residents and citizens of California.

21. PLAINTIFFS are, have been or were non-exempt agricultural employees of DEFENDANT.

22. PLAINTIFFS and all Proposed Class members were regularly required to:

- (a) Work without being paid for all hours worked;
- (b) Work without being paid minimum wage;
- (c) Work without being provided lawful meal periods or in the alternative

issued meal period premiums;

(d) Work without being provided lawful rest periods or in the alternative issued rest period premiums;

(e) Work without being reimbursed for vehicle expenses;

(f) Were not timely compensated upon their termination or resignation;

(g) Were not issued accurate itemized wage statements;

23. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices;

24. PLAINTIFFS and all aggrieved employees as defined in their notice letter to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code §2699(c).)

B. DEFENDANTS

25. DEFENDANT is, based upon information and belief, a California corporation operating within the State of California. Defendant’s corporate address is believed to be 1300 E. Myer Ave., Exeter, CA 93221. On information and belief, DEFENDANT employed PLAINTIFFS within the State of California and has done and continues to do business throughout the State of California.

26. The true names and capacities, whether individual, corporate, associate, or otherwise, of DEFENDANT sued herein as DOES 1 to 25, inclusive, are currently unknown to PLAINTIFFS, who therefore sue DEFENDANTS by such fictitious names under Code of Civil Procedure § 474. PLAINTIFFS are informed and believe, and based thereon allege, that each of the DEFENDANTS designated herein as a DOE are legally responsible in some manner for the unlawful acts referred to herein. PLAINTIFFS will seek leave of court to amend this Complaint to reflect the true names and capacities of the DEFENDANTS designated hereinafter as DOES when such identities become known.

27. Plaintiffs are informed and believe, and based thereon alleges, that each DEFENDANT acted in all respects pertinent to this action as the agent of the other DEFENDANT, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of

1 each DEFENDANT are legally attributable to the other DEFENDANT. Furthermore,
2 DEFENDANT in all respects acted as the employer and/or joint employer of PLAINTIFFS and
3 the Proposed Class members.

4 28. Furthermore, DEFENDANT acted in all respects as the employers or joint
5 employers of the Proposed Class. DEFENDANT, and each of them, exercised control over the
6 wages, hours or working conditions of the Proposed Class, or suffered or permitted the Proposed
7 Class to work, or engaged, thereby creating a common law employment relationship, with the
8 Proposed Class. Therefore, DEFENDANT, and each of them, employed or jointly employed the
9 Proposed Class.

10 29. DEFENDANT is engaged in the operation of agricultural fields for production of
11 fruit, as described above. DEFENDANT also owns and operates packing facilities in or near Kern
12 County, California, to sort, grade, package and distribute fruit harvested by PLAINTIFFS. At all
13 times mentioned herein, DEFENDANT employed PLAINTIFFS and members of the Proposed
14 Class as non-exempt employees in DEFENDANT'S agricultural field operations.

15 30. DEFENDANT issued or cause to be issued, or employed FLCs that issue, during
16 the relevant period, payroll checks to PLAINTIFFS and members of the Proposed Class for
17 agricultural work performed for DEFENDANT.

18 31. DEFENDANT is, and during the relevant period has been, engaged in the business
19 of cultivating, harvesting and packing fruit as described above.

20 32. With respect to the events at issue in this case, DEFENDANT acted as employer of
21 PLAINTIFFS and members of the Proposed Class. DEFENDANT is liable for the wage violations
22 alleged herein, pursuant to California law, including, but not limited to California Labor Code
23 section 2810.3.

24 33. As the employer of PLAINTIFFS and the Proposed Class, DEFENDANT is liable
25 for the violations of law described in this Complaint. See Cal. Labor Code section 2810.3.

26 34. PLAINTIFFS have complied with Cal. Labor Code section 2810.3, because more
27 than thirty (30) days prior to the filing of the complaint, Plaintiffs notified DEFENDANT Sun
28 Pacific of the violations alleged in this complaint.

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IV.

FACTUAL BACKGROUND

35. During the relevant period, DEFENDANT employed thousands of seasonal agricultural workers in pre-harvest and harvesting operations.

36. PLAINTIFFS and the Proposed Class are, and at all relevant times have been, non-exempt employees within the meaning of the California Labor Code § 500, *et seq.*, and the rules and regulations of California Industrial Welfare Commission (“IWC”) Wage Order No. 14-2001 [8 Cal. Code of Regs. § 11140] (“IWC Wage Order 14”), working in the cultivation and harvest of fruit on land owned, leased, managed and/or operated, harvested or otherwise made productive by DEFENDANT in or near Kern County, California.

37. During the relevant time period, PLAINTIFFS and the Proposed Class entered into working arrangements with DEFENDANT. These arrangements are formed and entered into each season, at least once (in many cases, more than once), at or near the time PLAINTIFFS and members of the Proposed Class are hired by DEFENDANT.

38. Under the working arrangements, which are also oral employment contracts, DEFENDANT offered PLAINTIFFS and members of the Proposed Class jobs in DEFENDANT’S agricultural operations, and PLAINTIFFS and the Proposed Class members accepted the job offers.

39. By words, conduct, practice, agreement, or custom and usage, including but not limited to posting IWC Wage Order 14 at the place of employment, DEFENDANT communicated to PLAINTIFFS and members of the Proposed Class that DEFENDANT would abide by the terms contained therein.

40. This working arrangement requires and required DEFENDANT to pay PLAINTIFFS and the Proposed Class their agreed-upon wages for all hours worked, to pay workers for required rest periods, to provide meal periods, and to abide in all respects by IWC Wage Order 14, which formed part of the working arrangement and/or agreement.

41. PLAINTIFFS and the Proposed Class were not and have not been compensated by DEFENDANT for all time worked for DEFENDANT.

42. By words, conduct, practice, agreement, or custom and usage, it is understood by PLAINTIFFS and the Proposed Class and DEFENDANT (collectively, the “PARTIES”) that, consistent with federal and state law, DEFENDANT would pay PLAINTIFFS and the Proposed Class for all work performed on one or more of the following bases: (1) a stated hourly wage (“hourly basis”); (2) an agreed-upon piece rate per bin basis for certain work (“piece rate per bin”).

43. PLAINTIFFS and the Proposed Class members worked on a piece rate per bin basis picking mandarins and were compensated on a piece rate per bin, bag, or box basis. Before a work shift started, at times, PLAINTIFFS and the Proposed Class were required to pick fruit that was going bad or fruit that had dropped to the ground. This could take up to two (2) hours of PLAINTIFFS’ and the Proposed Class members’ workday. Sometimes, the pay for these bins of fruit was split between PLAINTIFFS’ entire crew. Depending on the season, PLAINTIFFS’ crew could range anywhere from twenty-five-to-sixty (25-60) workers. DEFENDANT’S policy of splitting PLAINTIFFS’ and Proposed Class members’ piece rate pay between the entire crew meant PLAINTIFFS and the Proposed Class Members were compensated below the minimum wage required by California labor law.

44. At the end of PLAINTIFFS’ and the Proposed Class members’ shift, PLAINTIFFS and the Proposed Class were required to pick whatever fruit was left on the trees which would take anywhere between thirty-to-sixty (30-60) minutes. Sometimes, the pay for these bins of fruit picked on a piece rate per bin basis was split between PLAINTIFFS’ entire crew. DEFENDANT’S policy of splitting PLAINTIFFS’ and the Proposed Class members’ piece rate pay between the entire crew meant PLAINTIFFS and the Proposed Class members were compensated below the minimum wage required by California labor law.

45. At the end of PLAINTIFFS’ and the Proposed Class members’ shift, PLAINTIFFS and the Proposed Class had to put away their work materials which included filing in line to put away their ladders and other various work equipment. This would range anywhere from fifteen-to-thirty (15-30) minutes. DEFENDANT failed to compensate PLAINTIFFS and the Proposed Class for this time.

46. PLAINTIFFS and Proposed Class members were scheduled to report to work at a

specific time and did in fact report to work, but frequently were told by DEFENDANT to wait before they could begin harvesting work. PLAINTIFFS and the Proposed Class members would sometimes arrive between 7-8:00am and be forced to wait to begin work until 10-11:00am. This waiting time was neither recorded nor paid for by DEFENDANT, in violation of California labor law.

47. DEFENDANT'S failure to pay all appropriate compensation was knowing and willful.

48. Pursuant to California law, PLAINTIFFS and the Proposed Class were entitled to a paid ten (10) minute rest break for every four (4) hours worked or major fraction thereof.

49. PLAINTIFFS and the Proposed Class consistently and regularly worked shifts exceeding three-and-a-half (3.5) hours without being provided and/or paid for rest periods.

50. During the relevant period, DEFENDANT required PLAINTIFFS and the Proposed Class to travel between fields to perform work tasks. Sometimes this travel was by foot and sometimes the travel was by car. Because DEFENDANT did not provide buses or other transportation to workers so that they could travel from field to field in the middle of their shifts, PLAINTIFFS and members of the Proposed Class would walk or would use their own vehicles to travel from field to field. DEFENDANT did not compensate PLAINTIFFS and the Proposed Class for this time nor reimburse PLAINTIFFS and the Proposed Class for their vehicle use for travel between DEFENDANT'S fields during the course of a work shift, in violation of California labor law.

51. When PLAINTIFFS and the Proposed Class members travelled between fields during their shifts, DEFENDANT failed to record the travel time and failed to compensate PLAINTIFFS and the Proposed Class for this travel time.

52. During the relevant time period, DEFENDANT failed to provide or permit the taking of meal periods in compliance with California labor law. Frequently, DEFENDANT deprived PLAINTIFFS and the Proposed Class of meal periods for shifts lasting longer than five (5) hours or provided them with less than thirty (30) minutes. DEFENDANT failed in its obligations by frequently failing to provide meal periods to PLAINTIFFS and the Proposed Class

1 and frequently failing to record a meal period.

2 53. As a result of the of the unpaid and unrecorded hours and as a result of the failure
3 to properly record meal periods, DEFENDANT failed to keep accurate records of the hours worked
4 for PLAINTIFFS and the Proposed Class and has failed to issue accurate itemized wage statements
5 that properly reflect all of the hours and rates worked by PLAINTIFFS and the Proposed Class.

6 54. During the relevant time period, PLAINTIFFS and other members of the Proposed
7 Class have quit their employment with DEFENDANTS during or between the various tree fruit
8 seasons, or have been laid off or discharged, either permanently or for the duration of the season,
9 at the end of or during a season.

10 55. DEFENDANT failed to pay PLAINTIFFS and the Proposed Class all wages owed
11 to them at the time they quit or were laid off or discharged.

12 56. As a result of the acts alleged herein, DEFENDANT violated Labor Code §2699,
13 *et seq.*

14 **V.**

15 **CLASS ACTION ALLEGATIONS**

16 57. PLAINTIFFS bring this action on behalf of themselves and all others similarly
17 situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. PLAINTIFFS seek
18 to represent a proposed class composed of and defined as follows:

19 All persons who are employed or have been employed by SUN
20 PACIFIC FARMING COOPERATIVE, INC., in the State of
21 California who worked one or more shifts as a harvest worker since
22 four (4) years prior to the filing of this action to the present.
23 (“Proposed Class”)

24 58. PLAINTIFFS reserve the right under Rule 3.765(b) of the California Rules of Court
25 to amend or modify the class description with greater specificity, by division into subclasses, or
26 by limitation to particular issues.

27 59. This action has been brought and may properly be maintained as a class action
28 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
community of interest in the litigation and the Proposed Classes are easily ascertainable.

1 **A. Numerosity**

2 60. The potential members of the Proposed Class as defined are so numerous that
3 joinder of all the members of the Proposed Class is impracticable. While the precise number of
4 Proposed Class members has not been determined at this time, PLAINTIFFS are informed and
5 believe that DEFENDANT currently employ, and during the relevant time periods employed over
6 50 members of the Proposed Class.

7 61. PLAINTIFFS allege that DEFENDANT’S employment records would provide
8 information as to the number and location of all Proposed Class members. Joinder of all members
9 of the Proposed Class is not practicable.

10 **B. Commonality**

11 62. There are questions of law and fact common to the Proposed Class that predominate
12 over any questions affecting only individual Proposed Class members. These common questions
13 of law and fact include, without limitation:

14 a. Whether Defendant failed to pay wages and/or overtime compensation as
15 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, 1194.2, and 1199;

16 b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 14-
17 2001 or other applicable IWC Wage Orders, by failing to inform PLAINTIFFS and the Proposed
18 Class of their right to take meal periods and by failing to provide required meal periods throughout
19 the term of employment and failing to compensate said employees one (1) hours wages in lieu of
20 rest periods;

21 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 14
22 -2001 or other applicable IWC Wage Orders, by failing to inform PLAINTIFFS and the Proposed
23 Class of their right to take rest periods and failing to provide required rest periods throughout the
24 term of employment and failing to compensate said employees one (1) hours wages in lieu of rest
25 periods;

26 d. Whether DEFENDANT violated §§ 201-203 of the Labor Code by failing
27 to pay compensation due and owing at the time that any Proposed Class Member's employment
28 with DEFENDANT terminated;

1 e. Whether DEFENDANT violated § 17200, *et seq.* of the Business &
2 Professions Code by engaging in the acts previously alleged; and

3 f. Whether PLAINTIFFS and the members of the Proposed Class are entitled
4 to equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

5 **C. Typicality**

6 63. The claims of PLAINTIFFS are typical of the claims of the Proposed Class.
7 PLAINTIFFS and all members of the Proposed Class sustained injuries and damages arising out
8 of and caused by DEFENDANT'S common course of conduct in violation of laws, regulations
9 that have the force and effect of law, and statutes as alleged herein.

10 **D. Adequacy of Representation**

11 64. PLAINTIFFS will fairly and adequately represent and protect the interests of the
12 members of the proposed Class.

13 65. Counsel who represent PLAINTIFFS and the Proposed Class are competent and
14 experienced in litigating large employment class actions.

15 **E. Superiority of Class Action**

16 66. A class action is superior to other available means for the fair and efficient
17 adjudication of this controversy. Individual joinder of all Proposed Class members is not
18 practicable, and questions of law and fact common to the Proposed Class predominate over any
19 questions affecting only individual members of the Proposed Class. Each member of the Proposed
20 Class has been damaged and is entitled to recovery by reason of DEFENDANT'S illegal policy
21 and/or practice of failing to pay all wages due, failing to provide meal and rest periods, and failing
22 to pay all wages upon resignation or termination.

23 67. Class action treatment will allow those similarly situated persons to litigate their
24 claims in the manner that is most efficient and economical for the parties and the judicial system.
25 PLAINTIFFS are unaware of any difficulties that are likely to be encountered in the management
26 of this action that would preclude its maintenance as a class action.

27 **VI.**

28 **FIRST CAUSE OF ACTION**

1 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

2 **FAILURE TO PAY ALL WAGES UNDER**

3 **LABOR CODE § 510, 1194, and 1199**

4 68. PLAINTIFFS, on behalf of themselves and the Proposed Class, reallege and
5 incorporate by reference all previous paragraphs.

6 69. By words, conduct, practice, custom, or usage, including by the posting of IWC
7 Wage Order 14, DEFENDANT and PLAINTIFFS and the Proposed Class agreed on wage rates
8 for all work performed and/or hours worked.

9 70. DEFENDANT has breached the established employment contracts or working
10 arrangements by failing to pay PLAINTIFFS and the Proposed Class all wages earned. Such
11 breach has caused injury and damages to PLAINTIFFS and members of the Proposed Class.

12 71. At various times during the relevant time period, DEFENDANT failed to
13 compensate PLAINTIFFS and the Proposed Class for the time PLAINTIFFS and the Proposed
14 Class spent waiting pre-shift before work began.

15 72. PLAINTIFFS and the Proposed Class would often arrive to their designated
16 mandarin fields and were told by DEFENDANT to wait to begin work.

17 73. PLAINTIFFS and the Proposed Class would frequently arrive between 7-8:00am
18 and wait until 10-11:00am to begin work.

19 74. DEFENDANT failed to record or compensate PLAINTIFFS and the Proposed
20 Class for this waiting time in contravention of California Labor Code section 1194 and IWC Wage
21 Order 14.

22 75. At various times during the relevant time period, DEFENDANT failed to
23 compensate PLAINTIFFS and the Proposed Class for the time spent post-shift putting away and
24 storing PLAINTIFFS' and the Proposed Class members' work equipment.

25 76. At various times during the relevant time period, DEFENDANT required
26 PLAINTIFFS and the Proposed Class to start work at one field in the morning before travelling to
27 a different field by foot or in PLAINTIFFS' and the Proposed Class members' own cars during
28 the work day.

77. DEFENDANT failed to record the travel time and failed to compensate PLAINTIFFS and the Proposed Class for this travel time.

78. California Labor Code § 1194(a) provides that it is unlawful to pay less than the minimum wage established by law. DEFENDANT failed to compensate PLAINTIFFS and the Proposed Class members the lawful minimum wage as required by California labor law due to DEFENDANT'S policy of splitting up PLAINTIFFS' and the Proposed Class members' pay between the entire work crew when PLAINTIFFS and the Proposed Class were paid on a piece rate per bin basis. DEFENDANT'S failure to pay the sums identified above and required by IWC Wage Order 14 violates California Labor Code § 1194(a) and is therefore unlawful.

79. As a result of the unlawful acts of DEFENDANT, PLAINTIFFS and the Proposed Class have been deprived of wages in an amount to be determined at trial.

80. Pursuant to California Labor Code §§ 510, 1194, and 1199, in addition to IWC Wage Order 14, PLAINTIFFS and the Proposed Class are entitled to recovery of such unpaid amounts, plus interest and liquidated damages, attorneys' fees and costs, pursuant to California Labor Code §§ 1194.2(a) and/or 218.5(a).

VII.

SECOND CAUSE OF ACTION

PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS

FAILURE TO PROVIDE AND/OR COMPENSATE FOR REST PERIODS PURSUANT

TO LABOR CODE § 226.7, IWC WAGE ORDER 14

81. PLAINTIFFS, on behalf of themselves and the Proposed Class, reallege and incorporate by reference all previous paragraphs.

82. Labor Code § 226.7 and IWC Wage Order 14 require an employer to provide paid rest periods or to pay an additional one (1) hour of wages for each paid rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked or major fraction thereof.

83. During the relevant period, PLAINTIFFS consistently worked shifts of over three-and-a-half (3.5) hours, but DEFENDANT failed to provide mandated paid rest periods or in the

1 alternative issue one (1) hour of wages at PLAINTIFFS' and the Proposed Class Members' regular
2 rate of pay. DEFENDANT failed to maintain an accurate rest period policy.

3 **VIII.**

4 **THIRD CAUSE OF ACTION**

5 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

6 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO LABOR CODE §§ 226.7**

7 **AND 512; FAILURE TO KEEP ACCURATE RECORDS OF MEAL PERIODS**

8 **PURSUANT TO IWC WAGE ORDER 14**

9 84. PLAINTIFFS, on behalf of themselves and the Proposed Class, reallege and
10 incorporate by reference all previous paragraphs.

11 85. During the relevant time period, DEFENDANT failed to provide or permit the
12 taking of meal periods in compliance with California labor law. Frequently, DEFENDANT
13 deprived PLAINTIFFS and the Proposed Class of meal periods for shifts lasting longer than five
14 (5) hours.

15 86. IWC Wage Order 14, ¶ 11 provides that "[e]ach employer shall authorize and
16 permit all employees after a work period of not more than five (5) hours to take a meal period of
17 not less than thirty (30) minutes, except that when a work period of not more than six (6) hours
18 will complete the day's work, the meal period may be waived by mutual consent of employer and
19 employee. Unless the employee is relieved of all duty during a thirty (30) minute meal period, the
20 meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on
21 duty' meal period shall be permitted only when the nature of the work prevents an employee from
22 being relieved of all duty and when by written agreement between the parties an on-the-job paid
23 meal is agreed to." IWC Wage Order 14, ¶ 7 imposes on employers an obligation to record and
24 maintain accurate records of "meal periods." DEFENDANT failed in its obligations to
25 PLAINTIFFS and the Proposed Class by failing to provide meal periods and failing to record meal
26 periods.

27 87. Labor Code §§ 226.7 and 512 require an employer to pay one (1) additional hour
28 of compensation for each meal period the employer fails to provide. Employees are entitled to a

1 first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within
2 the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
3 over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after
4 no more than ten (10) hours of work.

5 88. DEFENDANT failed to pay PLAINTIFFS and the Proposed Class one (1) hour of
6 wages for each meal period that was not provided, was not long enough, or was not provided
7 timely, as required by law.

8 89. DEFENDANT failed to maintain a policy informing PLAINTIFFS and the
9 Proposed Class of these rights.

10 IX.

11 **FOURTH CAUSE OF ACTION**

12 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

13 **FAILURE TO REIMBURSE VEHICLE EXPENSES PURSUANT TO**

14 **LABOR CODE § 2802**

15 90. PLAINTIFFS, on behalf of themselves and the Proposed Class, reallege and
16 incorporate by reference all previous paragraphs.

17 91. During the relevant period, DEFENDANT required PLAINTIFFS and the
18 Proposed Class to travel between fields to perform various work tasks.

19 92. Because DEFENDANT did not provide buses or other transportation to workers so
20 that they could travel from field to field in the middle of their shifts, PLAINTIFFS and the
21 Proposed Class used their own vehicles to travel from field to field.

22 93. Pursuant to California Labor Code section 2802:

23 An employer shall indemnify his or her employee for all necessary
24 expenditures or losses incurred by the employee in direct consequence of
25 the discharge of his or her duties . . .” See Cal. Lab. Code § 2802.

26 Necessary expenditures or losses includes costs of vehicle use when the
27 vehicle use is necessary for the performance of work.

28 94. DEFENDANT failed to reimburse PLAINTIFFS and the Proposed Class for their
mileage and/or vehicle expenses in violation of California labor law.

1 X.

2 **FIFTH CAUSE OF ACTION**

3 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

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

5 95. PLAINTIFFS, on behalf of themselves and the Proposed Class, reallege and
6 incorporate by reference all previous paragraphs.

7 96. California Labor Code Section 203 provides, in relevant part:

8 If an employer willfully fails to pay, without abatement or reduction, in
9 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
10 employee who is discharged or who quits, the wages of the employee shall
11 continue as a penalty from the due date thereof at the same rate until paid
or until an action therefore is commenced; but the wages shall not continue
for more than 30 days.

12 97. By willfully failing to pay wages that were due - in accordance with California
13 Labor Code §§ 201, 202, and 205.5 - each time any of the PLAINTIFFS and members of the
14 Proposed Class were discharged, laid off, or quit, including when such termination of employment
15 occurred at the end of each harvest season, DEFENDANT violated California Labor Code § 203.
16 Therefore, PLAINTIFFS' and the Proposed Class members' wages continue as a penalty for an
17 additional thirty (30) days for each violation.

18 XI.

19 **SIXTH CAUSE OF ACTION**

20 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

21 **FAILURE TO KEEP ACCURATE INFORMATION AND PROVIDE ACCURATE**
22 **ITEMIZED WAGE STATEMENTS PURSUANT TO LABOR CODE § 226, IWC WAGE**

23 **ORDER 14)**

24 98. PLAINTIFFS, on behalf of themselves and the Proposed Class, reallege and
25 incorporate by reference all previous paragraphs.

26 99. In pertinent part, IWC Wage Order 14, paragraph 7(A) provides, and during the
27 relevant period provided, that every employer shall keep accurate information with respect to each
28 employee including time records showing when the employee begins and ends each work period

1 and total hours worked in the payroll period. When a piece rate or incentive plan is in operation,
2 piece rates or an explanation of the incentive plan formula shall be provided to employees.

3 100. In each pay period during the relevant period, DEFENDANT has violated IWC
4 Wage Order 14 by failing to keep accurate information with respect to, among other things, when
5 PLAINTIFFS and the Proposed Class members started and ended each work shift and the total
6 hours worked, and when PLAINTIFFS and the Proposed Class members took their meal periods.

7 101. In pertinent part, California Labor Code § 226(a) provides:

8 Every employer shall, semimonthly or at the time of each payment of
9 wages, furnish each of his or her employees . . . an accurate itemized
10 statement in writing showing (1) gross wages earned, (2) total hours worked
11 by the employee, . . . (3) the number of piece-rate units earned and any
12 applicable piece rate if the employee is paid on a piece-rate basis . . . (5) net
wages earned . . . (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.

13 102. During each pay period during the relevant time period, DEFENDANT violated
14 California Labor Code § 226 by failing to provide to PLAINTIFFS and the Proposed Class
15 accurate statements showing, among other things, total hours worked, the start and end time of
16 each shift, the timing in relation to meal periods, and gross wages earned.

17 XII.

18 SEVENTH CAUSE OF ACTION

19 PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS

20 VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200

21 103. PLAINTIFFS, on behalf of themselves and the Proposed Class, reallege and
22 incorporate by reference all previous paragraphs.

23 104. This is a Class Action for Unfair Business Practices. PLAINTIFFS, on behalf of
24 themselves, on behalf of the general public, and on behalf of the Proposed Class, bring this claim
25 pursuant to Business & Professions Code § 17200, *et seq.* The conduct of DEFENDANT as
26 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to
27 PLAINTIFFS, the general public, and the Proposed Class. PLAINTIFFS seek to enforce important
28 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

1 105. Each Plaintiff is a “person” within the meaning of Business & Professions Code
2 § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
3 and other appropriate equitable relief.

4 106. California Business and Professions Code § 17200, *et seq.*, provides, in relevant
5 part, that “unfair competition shall mean and include any unlawful, unfair, or fraudulent business
6 act or practice...”

7 107. PLAINTIFFS bring this action on behalf of themselves and on behalf of the general
8 public pursuant to California Business and Professions Code § 17204.

9 108. In California, there is a fundamental and substantial public policy protecting an
10 employee’s wages.

11 109. The following practices of DEFENDANT are unlawful, and considered unfair
12 business practices under California Business & Professions Code § 17200, *et seq.*:

13 (a) underpaying PLAINTIFFS in violation of California Labor Code §§ 200,
14 205.5, 221, 223, 1194, 1197; IWC Wage Order 13 and IWC Wage Order 14, as fundamental public
15 policies of the State of California;

16 (b) failing to provide paid rest periods and meal periods to PLAINTIFFS;

17 (c) retaining the benefit of the labor performed by PLAINTIFFS, without
18 reasonable compensation;

19 (d) retaining the benefit of the labor performed by PLAINTIFFS, without
20 providing compensation according to agreed-upon wages, crew piece rates or other agreed-upon
21 and/or contractually established rates in violation of California Labor Code § 205.5;

22 (e) failing to promptly pay all wages due to PLAINTIFFS, as mandated by
23 California Labor Code §§ 201, 202 and 205.5, when PLAINTIFFS were discharged, laid off or
24 quit;

25 (f) failing to record and pay for PLAINTIFFS’ travel time; and

26 (g) failing to reimburse PLAINTIFFS for expenses incurred in the performance
27 of their jobs.

28 110. These unlawful and unfair acts present a continuing threat to the general public that

1 cannot be adequately remedied at law. PLAINTIFFS are informed and believe that such conduct
2 will continue unless enjoined by this Court pursuant to California Business and Professions Code
3 § 17203.

4 111. The limitations period under California Business and Professions Code § 17208 is
5 four (4) years. Accordingly, PLAINTIFFS seek relief for the period going back four years prior to
6 the filing of this Complaint and continuing into the present until judgment is entered.

7 **XIII.**

8 **EIGHTH CAUSE OF ACTION**

9 **PLAINTIFFS ON BEHALF OF THEMSELVES AND ALL AGGRIEVED EMPLOYEES**

10 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

11 112. PLAINTIFFS, on behalf of themselves and all aggrieved employees, reallege and
12 incorporate by reference all previous paragraphs.

13 113. As a result of the acts alleged above and specifically incorporated herein,
14 PLAINTIFFS seek penalties under Labor Code §2699, et seq use of DEFENDANT'S violation of
15 Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, 2802; Wage Order 14-2001;
16 and California Code of Regulations, Title 8, Section 11140, which call for civil penalties.

17 114. For each such penalty, PLAINTIFFS and the aggrieved employees are entitled to
18 penalties in an amount to be shown at trial, subject to the following formula:

19 a. \$100 for the initial violation per employee per pay period.

20 b. \$200 for each subsequent violation per employee per pay period.

21 115. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
22 twenty-five percent (25%) to the affected employees.

23 116. Pursuant to Labor Code § 2699.3(a)(1), PLAINTIFFS uploaded a notice letter to
24 the LWDA¹ and mailed a letter by certified mail to DEFENDANT SUN PACIFIC FARMING
25 COOPERATIVE INC.'S entity address, which is 1300 E. Myer Ave. Exeter, CA 93221, as
26 proscribed by the Code on August 16, 2021, describing DEFENDANT'S conduct in violation of

27 ¹ PLAINTIFFS electronically filed a PAGA Claim Notice to the LWDA, via the State of
28 California Labor and Workforce Development Agency / Department of Industrial Relations
website (<https://dir.tfaforms.net/308>).

1 Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, and 2802. (*see* Exhibit “1.”)
2 PLAINTIFFS also obtained an e-filing confirmation from the LWDA confirming receipt of the
3 notice (*see* Exhibit “2”).

4 117. As no letter evidencing the LWDA’s intention to investigate was received by
5 PLAINTIFFS’ Counsel within sixty-five (65) calendar days, PLAINTIFFS are entitled to
6 commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor
7 Code §2699.3(a)(2)(A). PLAINTIFFS will also provide the LWDA with a filed-stamped copy of
8 the First Amended Class and Representative Action Complaint immediately.

9 **REQUEST FOR RELIEF**

10 **WHEREFORE**, PLAINTIFFS pray for the following relief:

11 118. For compensatory damages in an amount equal to all unpaid wages owed to
12 PLAINTIFFS and the Proposed Class including but not limited to Labor Code § 226.7 premium
13 pay in an amount equal to one (1) hour of wages per missed paid rest break or missed or late meal
14 break from at least four (4) years prior to the filing of this action to the present as may be proven;

15 119. For compensatory damages in the amount of unpaid wages and/or overtime not paid
16 to PLAINTIFFS and each Proposed Class Member from at least four (4) years prior to the filing
17 of this action to the present as may be proven;

18 120. For compensatory damages in the amount of PLAINTIFFS’ and each Proposed
19 Class members’ unreimbursed out of pocket expenses as a requirement of employment;

20 121. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code §226(a)
21 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
22 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
23 an aggregate penalty of four thousand dollars (\$4,000);

24 122. An award of statutory waiting-time penalties equal to thirty (30) days’ wages,
25 pursuant to California Labor Code § 203, each time any PLAINTIFFS and Proposed Class
26 members were discharged, quit, or permanently laid off, including but not limited to each time an
27 employee was discharged because of an end-of-season layoff, in accordance with California Labor
28 Code §§ 201, 202 and 205.5;

123. For monetary damages pursuant to paragraph 18 of IWC Wage Order 14 and the California Labor Code sections cited therein;

124. Pre- and post-judgment interest at the maximum legal rate of interest for each item of damages listed above;

125. An order enjoining DEFENDANT and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing PLAINTIFFS with proper wages and/or overtime, meal periods, rest periods, unreimbursed expenses, accurate itemized wage statements, and wages upon termination/resignation pursuant to Labor Code Sections 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802; Wage Order 14-2001;

126. For restitution for unfair competition pursuant to Business & Professions Code §17200, *et seq.*, including disgorgement of profits, in an amount as may be proven;

127. Reasonable attorneys' fees and costs incurred by PLAINTIFFS and the Proposed Class in the prosecution of this action pursuant to applicable law, including without limitation, California Labor Code §§ 218.5, 226, and 1194, 2699 and California Code of Civil Procedure Section 1021.5;

128. For penalties under Labor Code §2699, *et seq.* for DEFENDANT'S violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, 2802, and Wage Order 14-2001;

129. An award providing for payment of costs of suit;

130. An award of attorneys' fees; and

131. Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFFS hereby demand trial of their claims by jury to the extent authorized by law.

DATED: October 21, 2021

KINGSLEY & KINGSLEY, APC

By: _____

Eric B. Kingsley
Liane Katzenstein Ly
Attorneys for Plaintiffs

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

August 16, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

SUN PACIFIC FARMING COOPERATIVE, INC.
1300 E. Myer Ave.
Exeter, CA 93221
Via Certified Mailing No.: 7019 2280 0001 8902 4281

Re: MARTIN VELASCO and BALTAZAR LOPEZ MARTIN VELASCO v. SUN
PACIFIC FARMING COOPERATIVE, INC.

Gentlepersons:

This office represents MARTIN VELASCO and BALTAZAR LOPEZ MARTIN VELASCO (“Plaintiffs”) and a proposed group of current and former employees working for SUN PACIFIC FARMING COOPERATIVE, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiffs and all of Defendant’s aggrieved employees.

Plaintiffs wish to bring a representative action on behalf of themselves and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed by SUN PACIFIC FARMING COOPERATIVE, INC., in the state of California, and who have worked one or more shifts as a harvest worker since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Plaintiffs and the aggrieved employees worked for Defendant in or near Kern County, California as seasonal agricultural workers. Plaintiffs and the aggrieved employees worked in the cultivation and harvest of fruit on land owned, lease, managed and/or operated, harvested or otherwise made productive by Defendant. Plaintiffs and the aggrieved employees were paid on a piece rate for work such as picking mandarins, among other commodities.

Defendant violated Wage Order 14-2001 and California Labor Code §§ 510, 1194, and 1199, which require that an employee be paid all wages owed, including the applicable overtime hourly rates, for all hours worked. Moreover, pursuant to California Labor Code § 510(a) and Wage Order 14-2001(3)(A)(3) overtime hours must be compensated at: (a) One and one-half (1.5) times the employee’s regular rate of pay for all hours worked in excess of certain hours (depending on recent amendments) up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and (b) Double the

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California Labor Code §2699 Penalties

August 16, 2021

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employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

Here, Plaintiffs and the aggrieved employees were not properly compensated for all hours worked because Defendant failed to pay Plaintiffs and the aggrieved employees for each and every hour worked. Plaintiffs and the aggrieved employees routinely worked "off the clock" and performed compensable activities before, during, and after each working shift for which no pay was provided. Specifically, before the start of each shift, Plaintiffs and the aggrieved employees were required to pick fruit that was going bad or fruit that had dropped to the ground. This could take up to two (2) hours of Plaintiffs' and the aggrieved employees' workday. Sometimes, the pay for these bins of fruit was split between Plaintiffs' entire crew. Depending on the season, Plaintiffs' crew could range anywhere from twenty-five-to-sixty (25-60) workers. Defendant's policy of splitting Plaintiffs' and the aggrieved employees' piece rate pay between the entire crew meant they were compensated below the minimum wage required by California labor law. Plaintiffs and the aggrieved employees were scheduled to report to work at a specific time and did in fact report to work, but frequently were told by Defendant to wait before they could begin harvesting work. Plaintiffs and the aggrieved employees would sometimes arrive between 7-8:00am and be forced to wait to begin work until 10-11:00am. This waiting time was neither recorded nor paid for by Defendant, in violation of California labor law. In the middle of their shifts, Defendant required Plaintiffs and the aggrieved employees to travel between fields to perform work tasks and were not compensated for this travel time. At the end of Plaintiffs' and the aggrieved employees' shift, Plaintiffs and the aggrieved employees were required to pick whatever fruit was left on the trees which would take anywhere between thirty-to-sixty (30-60) minutes. Sometimes, the pay for these bins of fruit picked on a piece rate per bin basis was split between Plaintiffs' entire crew. Defendant's policy of splitting Plaintiffs' and the aggrieved employees' piece rate pay between the entire crew meant Plaintiffs and the aggrieved employees were compensated below the minimum wage required by California labor law. Additionally, at the end of Plaintiffs' and the aggrieved employees' shift, Plaintiffs and the aggrieved employees had to put away their work materials which included filing in line to put away their ladders and other various work equipment. This would range anywhere from fifteen-to-thirty (15-30) minutes. Defendant failed to record the travel time and waiting time, including work performed off-the-clock, and failed to compensate Plaintiff and the aggrieved employees for all hours worked.

Labor Code §226.7 and IWC Wage Order 14-2001 requires an employer to provide paid rest periods or to pay an additional hour (1) of compensation for each paid rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked or major fraction thereof. Here, Plaintiffs and the aggrieved employees consistently worked over 3 1/2 hours without being provided with paid rest breaks while working on a piece rate basis for Defendant as matter of common policy and practice.

Labor Code §§ 226.7 and 512 require an employer to pay one (1) additional hour of compensation

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August 16, 2021

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for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Additionally, IWC Wage Order 14, ¶ 11 provides that “[e]ach employer shall authorize and permit all employees after a work period of not more than five (5) hours to take a meal period of not less than thirty (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 thirty (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 is agreed to.”

Here, Defendant failed to apprise Plaintiffs and the aggrieved employees of their rights associated with meal periods and failed to provide timely meal periods. Defendant has had a consistent policy of: (1) requiring Plaintiff and the aggrieved employees to take late meal breaks that occurred after the first five hours of each shift; (2) required Plaintiffs and the aggrieved employees to work shifts over ten hours without providing a second meal period of thirty minutes in length altogether; and (3) failed to pay such employees one (1) hour of pay at the aggrieved employees’ regular rate of pay for each workday that a meal period was not provided, was not provided in full, or was not provided in a timely manner, as required by California state wage and hour laws.

Further, IWC Wage Order 14, ¶ 7 imposes on employers an obligation to record and maintain accurate records of “meal periods.” Labor Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the IWC or from violating, refusing, or neglecting to comply with any order of the commission’s orders regarding wages, hours, and working conditions. Defendant does not record the time for Plaintiffs and the aggrieved employees. As such, Defendant has violated this statute and the Wage Order by failing to keep accurate records.

California Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. Plaintiffs and the aggrieved employees are entitled to reimbursement of all vehicle expenses they incurred throughout the duration of their employment. Defendant required Plaintiffs and the aggrieved employees to travel between fields to perform work tasks. Because Defendant did not provide buses or other transportation to workers so that they could travel from field to field in the middle of their shifts, Plaintiffs and the aggrieved employees used their own vehicles to travel from field to field. Defendant did not reimburse Plaintiffs and the aggrieved employees for their vehicle use for travel between Defendant’ fields during the course of a work shift, in violation of California law.

LABOR & WORKFORCE DEVELOPMENT AGENCY

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In pertinent part, IWC Wage Orders 14, paragraph 7(A) provides that every employer shall keep accurate information with respect to each employee including time records showing when the employee begins and ends each work period and total hours worked in the payroll period. 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. Here, in each pay period during the relevant period, Defendant has violated IWC Wage Order 14 by failing to record accurate information with respect to, among other things, when Plaintiffs and the aggrieved employees have begun and ended each work shift and the total hours worked.

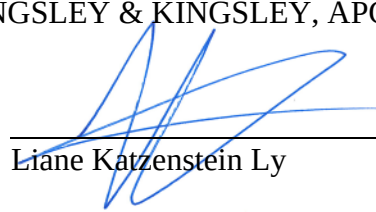
Plaintiffs or the aggrieved employees were issued by Defendant wage statements that failed to comply with California Labor Code § 226(a). Specifically, Defendant failed to provide Plaintiffs and the aggrieved employees accurate statements showing, among other things, total hours worked, the start and end time of each shift, the timing in relation to meal periods, and gross wages earned in violation of the Labor Code.

California Labor Code § 203(a) provides: If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any 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 aggrieved employees, including Plaintiffs, no longer work for Defendant. Furthermore, Defendant's work is seasonal. This means that Plaintiffs and all employees did not receive all wages owed when they were discharged, laid off, or quit each season. As such, Defendant have failed to pay Plaintiffs and the aggrieved employees all wages owed to them at the time they quit or are laid off or discharged, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly

LKL/km

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. MARTINEZ AGUILASOCHO LAW, INC., P.O. Box 1998
Bakersfield, CA 93303 via U.S. Regular Mail.

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Liane

Your Last Name *

Ly

Firm Name (if any) *

Kingsley & Kingsley, APC



(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.com

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 100

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Martin Velasco

Plaintiff/Aggrieved Employee Occupation *

Agricultural Worker

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Baltazar Lopez Martin Velasco

Plaintiff/Aggrieved Employee Occupation *

Agricultural Worker

[Remove](#)[Add Additional Plaintiffs](#)

Employer Information

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

Sun Pacific Farming Cooperative, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

1300 E. Myer Ave.

Employer City *

Exeter

Employer State *

California ▼

Employer Zip/Postal Code *

93221

Employer Industry *

Agriculture ▼

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

[REDACTED]

Credit Card Number *

[REDACTED]

CVV Number *

[REDACTED]

Credit Card Expiration Month *

[REDACTED]

mm

Credit Card Expiration Year *

[REDACTED]

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File

LWDA Letter – ...ative, Inc.pdf

Other Attachment – (if any) (must be a .pdf)

Choose File

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; &

financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Monday, August 16, 2021 12:17 PM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

8/16/2021

LWDA Case No. LWDA-CM-841504-21
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Martin Velasco, Baltazar Lopez Martin Velasco
Employer: Sun Pacific Farming Cooperative, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Monday, August 16, 2021 12:18 PM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

Thank you for your payment.

Order Information
Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-841504-21
Order Number: ORD-000131168
Total:\$75.00
Card Type: XXXXXXXXXX
Date: 8/16/2021

Billing Information
Name: Eric Kingsley
Email: service@kingsleykingsley.com
Billing Address:
16133 Ventura Blvd., Ste 1200
Encino, California
91436