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VIA ONLINE FILING

Labor and Workforce Development Agency

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Sacramento, CA 95814

PAGAfiling@dir.ca.gov

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: Angelica Cabrera v. Veg-Fresh Farms, Inc.; Veg-Fresh Farms, LLC; Diamond PEO, LLC;
United Employment Solutions Inc.; Personnel Staffing Group, LLC dba KBS Staffing

Dear Representative:

This office represents Angelica Cabrera ("Ms. Cabrera") with respect to her claims under the California Labor Code against Veg-Fresh Farms, Inc.; Veg-Fresh Farms, LLC; Diamond PEO, LLC; United Employment Solutions Inc.; and Personnel Staffing Group, LLC dba KBS Staffing (collectively, "**Employers**"). This letter is being sent simultaneously to Employers by certified mail.

Ms. Cabrera was jointly employed as an hourly, non-exempt employee by Veg-Fresh Farms, Inc.; Veg-Fresh Farms, LLC; Diamond PEO, LLC; United Employment Solutions Inc.; and Personnel Staffing Group, LLC dba KBS Staffing since approximately October 2018. United Employment Solutions Inc. and Personnel Staffing Group, LLC dba KBS Staffing are both a labor contractor which supplies temporary, part-time and full-time employees to businesses throughout California, including Veg-Fresh Farms, Inc., Veg-Fresh Farms, LLC, and Diamond PEO, LLC. Veg-Fresh Farms, Inc., Veg-Fresh Farms, LLC, and Diamond PEO, LLC are a wholesale produce consolidation, repacking, distribution and logistics solutions companies. During her employment with Veg-Fresh Farms, Inc., Veg-Fresh Farms, LLC, and Diamond PEO, LLC, Ms. Cabrera was assigned to perform work as a production worker at Veg-Fresh Farms, Inc., Veg-Fresh Farms, LLC, and Diamond PEO, LLC's location at 1400 Rincon Street, Corona, CA 92880.

Ms. Cabrera intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("**PAGA**"). Ms. Cabrera is seeking penalties on behalf of herself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of United Employment Solutions Inc., Personnel Staffing Group, LLC dba KBS Staffing, and/or Fresh Farms, Inc., Veg-Fresh Farms, LLC, and Diamond PEO, LLC ("**Aggrieved Employees**"). This letter is being sent in compliance with California Labor Code sections 2699.3 and 2810.3.

As detailed below, Employers violated several of California's wage and hour laws during Ms. Cabrera's employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the Industrial Welfare Commission Wage Orders ("IWC Wage Order") including *inter alia*, IWC Wage Order Nos. 8, 13, and 14. The claims made on behalf of Ms. Cabrera and Aggrieved Employees are based upon the following facts and theories:



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1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Ms. Cabrera and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employers regularly required Ms. Cabrera and Aggrieved Employees to work more than eight (8) hours in a day or forty (40) hours in a workweek, but failed to pay them overtime compensation for such work. Employers also failed to provide Ms. Cabrera and Aggrieved Employees with adequate training as to the payment of overtime compensation, all in an effort to keep their workers uninformed as to their legal right to overtime compensation. In addition, Employers regularly required Ms. Cabrera and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Ms. Cabrera and Aggrieved Employees to: (1) respond to Employers and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Ms. Cabrera and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Ms. Cabrera and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Ms. Cabrera and Aggrieved Employees to perform work off-the-clock without compensation, Employers also failed to accurately record the actual time worked by Ms. Cabrera and Aggrieved Employees, which resulted in a failure to pay Ms. Cabrera and Aggrieved Employees for all hours actually worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employers failed to pay overtime to Ms. Cabrera and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employers have failed to pay Ms. Cabrera and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Order Nos. 8, 13, and 14 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Ms. Cabrera and Aggrieved Employees will therefore seek unpaid wages; PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 8 and 13 and paragraph (18)(A) of IWC Wage Order No.14; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; compensation pursuant to Labor Code Section 1194; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employers failed to provide Ms. Cabrera and Aggrieved Employees with legally-compliant 30-minute



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meal periods. Ms. Cabrera and Aggrieved Employees were required by Employers to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Ms. Cabrera and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Ms. Cabrera and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Ms. Cabrera and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Ms. Cabrera and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded their own purported meal period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Ms. Cabrera and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Ms. Cabrera and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Ms. Cabrera and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Ms. Cabrera and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to in-person verbal interruptions; and (7) Employers' policy and culture prevented Ms. Cabrera and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees right to receive timely, uninterrupted, and duty-free meal periods.

Ms. Cabrera and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order Nos. 8, 13, and 14 and California Labor Code sections 226.7, 512(a) and 1198.

Ms. Cabrera and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 8 and 13 and paragraph (18)(A) of IWC Wage Order No. 14; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

Employers failed to authorize and permit Ms. Cabrera and Aggrieved Employees take legally-compliant 10-minute rest periods. Employers required Ms. Cabrera and Aggrieved Employees to work through



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rest periods. Ms. Cabrera and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Ms. Cabrera and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Ms. Cabrera and Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Ms. Cabrera and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded their own purported rest period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Ms. Cabrera and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Ms. Cabrera and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Ms. Cabrera and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Ms. Cabrera and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to in-person verbal interruptions; and (7) Employers' policy and culture prevented Ms. Cabrera and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees right to receive rest periods.

Ms. Cabrera and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order Nos. 8, 13, and 14 and California Labor Code sections 226.7, and 1198.

Ms. Cabrera and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 8 and 13 and paragraph (18)(A) of IWC Wage Order No. 14; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

As to each pay period, Employers have failed to timely pay all wages earned because Ms. Cabrera and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).



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Ms. Cabrera and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

As a result of the practices described above, the wage statements provided to Ms. Cabrera and Aggrieved Employees failed to include the actual hours worked, the actual gross wages earned, and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

Ms. Cabrera and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

Employers have failed to maintain accurate records relating to Ms. Cabrera and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated IWC Wage Order Nos. 8, 13, and 14 and California Labor Code sections 1198.5 and 1174(d).

Ms. Cabrera and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 8 and 13 and paragraph (18)(A) of IWC Wage Order No. 14; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order Nos. 8, 13, and 14 require employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Ms. Cabrera and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include, but are not limited to, snow boots, work aprons, and other work-related tools.

Accordingly, Employers violated IWC Order Nos. 8, 13, and 14 and California Labor Code sections 2800 and 2802.

Ms. Cabrera and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 8 and 13 and paragraph (18)(A) of IWC Wage Order No. 14; and attorneys' fees and costs.



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8. FAILURE TO PAY REPORTING TIME

Pursuant to California Labor Code section 1198, “the employment of any employee... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful.” The applicable Industrial Wage Orders, including *inter alia*, Wage Order Nos. 8, 13, and 14, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee’s regular rate of pay.

During the relevant time period, Employers failed to pay Ms. Cabrera and other Aggrieved Employees half the usual or scheduled day’s work in an amount no less than two (2) hours nor more than four (4) hours at the employee’s regular rate of pay for workdays in which Ms. Cabrera and the other Aggrieved Employees reported to work and were furnished less than half the usual or scheduled day’s work. Employers also failed to pay Ms. Cabrera and other Aggrieved Employees for two (2) hours at the employee’s regular rate of pay on days in which Ms. Cabrera and the other Aggrieved Employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

Ms. Cabrera and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 8 and 13 and paragraph (18)(A) of IWC Wage Order No. 14; and attorneys’ fees and costs.

9. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

Upon the termination of employment, Ms. Cabrera and Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers’ practices of requiring Ms. Cabrera and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Ms. Cabrera and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Ms. Cabrera and Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Ms. Cabrera and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and attorneys’ fees and costs.



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Therefore, on behalf of herself, the State of California and all Aggrieved Employees, Ms. Cabrera may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'Amir Nayebdadash', is written over a horizontal line.

Amir Nayebdadash

Notice provided to Employers via Certified Mail (7020 3160 0000 7205 3732)

VEG-FRESH FARMS, INC.
ATTN: LAWRENCE CANCELLIERI, JR., AGENT FOR SERVICE OF PROCESS
1400 WEST RINCON STREET
CORONA, CA 92880

Notice provided to Employers via Certified Mail (7020 3160 0000 7288 1298)

VEG-FRESH FARMS, LLC
ATTN: MARK C. WIDDER, AGENT FOR SERVICE OF PROCESS
1400 WEST RINCON STREET
CORONA, CA 92880

Notice provided to Employers via Certified Mail (7020 3160 0000 7288 1281)

ANDREW J. HOAG
FISHER & PHILLIPS LLP
444 SOUTH FLOWER STREET, SUITE 1590
LOS ANGELES, CA 90071
(ATTORNEYS FOR VEG-FRESH FARMS, INC.)

Notice provided to Employers via Certified Mail (7020 3160 0000 7288 1274)

DIAMOND PEO, LLC
ATTN: PACIFIC REGISTERED AGENTS, INC., AGENT FOR SERVICE OF PROCESS
FOUR EMBARCADERO CENTER, SUITE 1400 #85
SAN FRANCISCO, CA 94111



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Notice provided to Employers via Certified Mail (7020 3160 0000 7288 1267)

DIAMOND PEO, LLC
27442 CALLE ARROYO, SUITE A
SAN JUAN CAPISTRANO CA 92675

Notice provided to Employers via Certified Mail (7020 3160 0000 7288 1250)

UNITED EMPLOYMENT SOLUTIONS INC.
ATTN: ALEJANDRA SANDOVAL, AGENT FOR SERVICE OF PROCESS
56 QUIET HILLS ROAD
POMONA, CA 91766

Notice provided to Employers via Certified Mail (7020 3160 0000 7288 1243)

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ROXBOROUGH, POMERANCE, NYE & ANDREANI, LLP
5820 CANOGA AVE., STE 250
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(ATTORNEYS FOR UNITED EMPLOYMENT SOLUTIONS)

Notice provided to Employers via Certified Mail (7020 3160 0000 7288 1236)

PERSONNEL STAFFING GROUP, LLC DBA KBS STAFFING
ATTN: CORPORATE CREATIONS NETWORK, INC., AGENT FOR SERVICE OF PROCESS
4640 ADMIRALTY WAY, 5TH FLOOR
MARINA DEL REY, CA 90292