

Kevin Mahoney (SBN: 235367)
kmahoney@mahoney-law.net
Michael A. Swift (SBN: 296993)
mswift@mahoney-law.net
MAHONEY LAW GROUP, APC
249 East Ocean Boulevard, Suite 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

Assigned for all Purposes
Judge William Claster

CX-104

Attorneys for Plaintiff ARTURO MARTINEZ, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ARTURO MARTINEZ, as an individual
and on behalf of all other aggrieved
employees,

Plaintiff,

v.

LEGACY FARMS EMPLOYMENT
SERVICES COMPANY, INC., and DOES
1 through 50, inclusive,

Defendant.

Case No.: 30-2021-01232129-CU-OE-CXC

**COMPLAINT FOR DAMAGES AND
RESTITUTION**

1. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Recovery of Unpaid Minimum Wage and Overtime;
2. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to provide Rest Periods;
4. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Pay Wages Due upon Termination of Employment, and;
6. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Indemnify for Expenditures or Losses in Discharge of Duties.

1 Plaintiff ARTURO MARTINEZ (“Mr. Martinez” or “Plaintiff”), on behalf of himself and
2 all others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is an action brought on behalf of Plaintiff and the similarly Aggrieved
5 Employees he seeks to represent, as defined herein, as all non-exempt employees employed by or
6 formerly employed by Defendant LEGACY FARMS EMPLOYMENT SERVICES COMPANY,
7 INC. (“LEGACY” or “Defendant”). The Aggrieved Employees consists of all non-exempt
8 employees employed by or formerly employed by Defendant within the State of California who
9 were not subject to a collective bargaining agreement at any time during the relevant statutory
10 period, and were California Citizens at the time of the filing of this Complaint. The term “Relevant
11 Time Period” or “Time Period” is defined as one (1) year and sixty-five (65) days prior to the
12 filing of Plaintiff’s initial complaint in this matter through the present. Plaintiff reserves the right
13 to amend this complaint to reflect a different “Time Period” or modify the definition of
14 “Aggrieved Employees” as further discovery is conducted.

15 2. Plaintiff individually, and on behalf of the Aggrieved Employees, who were not
16 subject to a collective bargaining agreement at any time during the relevant statutory period, seeks
17 relief against Defendant for violation of the California Labor Code (“Labor Code”) as follows:
18 (1) failure to pay all wages due, including minimum, regular, and overtime wages as a result of
19 Defendant’s policy of improperly paying its non-exempt hourly employees; (2) failure to provide
20 meal periods or compensation in lieu thereof; (3) failure to provide rest periods or compensation
21 in lieu thereof; (4) failure to provide accurate itemized wage statements; (5) failure to pay wages
22 upon ending employment to terminated or resigned employees; and (6) failure to indemnify for
23 necessary expenditures. Plaintiff seeks penalties pursuant to Labor Code section 2608 et seq., the
24 Private Attorneys General Act of 2004 (“PAGA”) in connection with Defendant’s Labor Code
25 violations.

26 3. At all relevant times herein, Defendant consistently maintained and enforced
27 against Plaintiff and Aggrieved Employees the following unlawful practices and policies: (a)
28 willfully refusing to pay Plaintiff and Aggrieved Employees for all hours worked, including

1 minimum wage and overtime; (b) failing to provide Plaintiff and Aggrieved Employees with meal
2 and/or rest periods or compensation in lieu thereof; (c) willfully refusing to compensate Plaintiff
3 and Aggrieved Employees wages due and owing at the time Plaintiff's and Aggrieved Employees'
4 employment with Defendant ended; (d) willfully refusing to furnish to Plaintiff and Aggrieved
5 Employees accurate itemized wage statements upon payment of wages; and (e) willfully failing
6 to reimburse Plaintiff and Aggrieved Employees for necessary expenditures.

7 **JURISDICTION AND VENUE**

8 4. This Court has subject matter jurisdiction over the causes of action alleged in this
9 Complaint, because the Court is a court of general subject matter jurisdiction and is not otherwise
10 excluded from exercising subject matter jurisdiction over said causes of action.

11 5. Venue is proper in the County of Orange, because the Defendant maintains its
12 location and transacts business in this county, the obligations and liability arise in this county,
13 and work performed by Plaintiff and Aggrieved Employees that form the subject of this action
14 occurred in this county.

15 6. The California Superior Court has jurisdiction in the matter, because the individual
16 claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional threshold for
17 Federal Court and this action seeks recovery of civil penalties. Plaintiff is a resident of and/or
18 domiciled in the State of California. Defendant provides premium ground support services to
19 airlines and airport service companies doing business in the State of California.

20 7. Further, there is no federal question at issue as the issues herein are based solely
21 on California statutes and law, including the California Labor Code, California Code of Civil
22 Procedure, California Business and Professions Code, and California Rules of Court.

23 **THE PARTIES**

24 **A. The Plaintiff**

25 8. Mr. Martinez is, and at all times herein mentioned was, a resident of the County
26 of Orange. Mr. Martinez began his employment with Defendant on or around 2007, as a
27 maintenance employee. Mr. Martinez was terminated from his employment on or around October
28 12, 2020. Throughout the Relevant Time Period, Plaintiff's duties included handling general

1 maintenance and mechanic duties including maintenance and repair of machinery and the
2 grounds. Plaintiff and each of the Aggrieved Employees are identifiable, current and/or formerly-
3 similarly situated persons who were employed in non-exempt hourly positions in California for
4 the Defendant during the Relevant Time Period, and were not subject to a collective bargaining
5 agreement at any point during the relevant statutory period.

6 **B. The Defendant**

7 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant
8 LEGACY FARMS EMPLOYMENT SERVICES COMPANY, INC. (“Defendant”) is a
9 Delaware corporation operating in California in the business of packaging and delivering fresh
10 produce. Defendant is and/or was the employer of Plaintiff and similarly situated employees
11 during the Relevant Time Period. On information and belief, and based thereon, Plaintiff alleges
12 that Defendant is conducting business in good standing in California.

13 10. Plaintiff is ignorant of the true names, capacities, relationships and extent of
14 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
15 inclusive, but on information and belief alleges that said Defendants are legally responsible for
16 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
17 capacities of the DOE Defendants when ascertained.

18 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
19 acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint
20 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant
21 legally attributable to the other Defendant.

22 12. Plaintiff is informed and believes, and based thereon alleges, that each defendant
23 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
24 managing agent, and/or principal of the co-Defendant, and in performing the actions mentioned
25 below was acting, at least in part, within the course and scope of that authority as such agent,
26 proxy, servant, partner, joint venture, single enterprise, joint employer employee, alter-ego,
27 managing agent, and/or principal with the permission and consent of the co-Defendant. Plaintiff
28 also alleges the acts of each Defendant are legally attributable to the other Defendant.

1 13. Plaintiff is informed and believes, and based thereon alleges, that each of the
2 Defendant sued herein was, at all relevant times hereto, the employer, owner, shareholder,
3 principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing
4 agent, joint employer and/or alter-ego of the remaining Defendant, and was acting, at least in part,
5 within the course and scope of such employment and agency, with the express and implied
6 permission, consent and knowledge, approval and/or ratification of the other Defendant. The
7 above co-Defendant, managing agents, and supervisors aided, abetted, condoned, permitted,
8 approved, authorized and/or ratified the unlawful acts described herein.

9 **ADMINISTRATIVE PREREQUISITES**

10 14. By this complaint, Plaintiff brings this case as a representative action seeking
11 penalties for the State of California in a representative capacity, as provided by the Private
12 Attorneys General Act, Labor Code section 2698 et seq. ("PAGA"), as an aggrieved employee
13 was employed by Defendant and did not receive all wages due, was not paid minimum wage, was
14 not paid overtime, was not provided accurate wage statements, was not reimbursed for necessary
15 expenditures, and was not able to take lawful meal and rest breaks or receive premium
16 compensation in lieu thereof.

17 15. Prior to filing this Complaint, on September 9, 2021, Plaintiff gave written notice
18 by certified mail to the Labor and Workforce Development Agency ("LWDA") (LWDA Case
19 No. LWDA-CM-844059-21) and to Defendant of the specified provisions alleged to have been
20 violated, including the facts and theories to support the alleged violation as required by Labor
21 Code section 2699.3. A true and correct copy of Plaintiff's original letter sent to the LWDA on
22 September 9, 2021, is attached hereto as "Exhibit A."

23 16. More than sixty-five (65) days have passed since Plaintiff submitted its notice to
24 the LWDA and Defendant of the specific alleged Labor Code violations and the LWDA has not
25 provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff further has
26 received no notice of Defendant's intent to cure any of the alleged violations. Therefore, Plaintiff
27 has satisfied the administrative prerequisites for filing this action.

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18. During the Relevant Time Period, Defendant employed Plaintiff and other Aggrieved Employees in non-exempt, hourly-paid positions throughout California.

20. Defendant also failed to make reasonably available legally compliant rest periods. Mr. Martinez is informed and believes that Defendant did not have either written or verbal policies regarding meal and rest breaks. This resulted in employees taking meal and rest breaks only sporadically. Defendant failed to provide adequate coverage to relieve employees to take their rest breaks. In addition, Defendant subjected Plaintiff and Aggrieved Employees to pressure to complete work on time, thus discouraging employees from taking their lawful meal and rest breaks. Due to Defendant's policies and practices, which prioritized work tasks over rest and meal period compliance, Plaintiff and Aggrieved Employees missed meal and rest periods, or received them untimely.

22. Mr. Martinez further alleges that Defendant failed to compensate him and the

1 Aggrieved Employees at the legally mandated wage rates for all hours worked. Mr. Martinez and
2 Aggrieved Employees performed work off-the-clock, during overtime periods and during meal
3 periods and regularly and frequently worked beyond the eighth (8th) hour of their shifts. For
4 example, Mr. Martinez and Aggrieved Employees routinely were sent tasks and required to work
5 off the clock. On a regular basis, Plaintiff and Aggrieved Employees worked approximately
6 eleven (11) hours per day. However, when Plaintiff worked over eight (8) hours in a shift,
7 Defendant would only pay him at his regular rate and not at the proper overtime rate or double-
8 time rate.

9 23. Further, to the extent the total hours worked exceeded eight (8) in one day, or forty
10 (40) in one week, all excess hours were required to be compensated at a rate of one-and-a-half
11 times the employee's base rate of pay. Similarly, all excess hours over twelve (12) hours in a day
12 were required to be compensated at a rate of two times the employee's base rate of pay.
13 Defendant's failure to provide Plaintiff and Aggrieved Employees any pay whatsoever for off-
14 the-clock hours worked therefore necessarily resulted in overtime violations as well.

15 24. Defendant failed to keep accurate time records reflecting the time Mr. Martinez
16 and Aggrieved Employees started their shifts, the time they began and ended their meal periods,
17 and the time they ended their shifts. Defendant required Plaintiff and Aggrieved Employees to
18 clock-in or out for their meal periods and often required employees to continue working. As a
19 result, the timekeeping by Defendant was non-compliant as required under the Labor Code and
20 Code of Regulations.

21 25. By failing to include on Plaintiff's and Aggrieved Employees' paystubs all owed
22 meal and rest premium pay, and all minimum wage and overtime and double-time owed,
23 Defendant failed to keep accurate payroll records and failed to provide Plaintiff and Aggrieved
24 Employees with complete and accurate wage statements.

25 26. In addition, Defendant willfully failed to reimburse Plaintiff and Aggrieved
26 Employees for necessary business expenses incurred during their employment with Defendant.
27 Specifically, Defendant required, and on information and belief continues to require, its
28 employees to communicate with one another through their personal cellular phones. Defendant

1 required, and on information and belief continues to require, its management to contact employees
2 to convey schedules, job duties, and other items to employees using their personal cellular phones.
3 Defendant failed to reimburse its employees for the expense of using their personal cellular
4 phones for business purposes in violation of the Labor Code and the IWC Wage Order.

5 27. Further, to the extent the above violations caused outstanding wages to be owed
6 to Plaintiff and Aggrieved Employees, Defendant failed to pay all wages earned to Plaintiff and
7 Aggrieved Employees upon the termination of their employment.

8 **FIRST CAUSE OF ACTION**

9 **Violation of PAGA for Failure to Pay All Wages including Overtime**

10 **(Plaintiff against Defendant and DOES 1-50)**

11 28. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
12 preceding paragraphs of this Complaint as if fully set forth herein.

13 29. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
14 and forty (40) hours per week. Defendant failed to pay Plaintiff and Aggrieved Employees
15 minimum wage for all hours worked and overtime premium for hours worked in excess of over
16 eight (8) hours per day and forty (40) hours per week for work performed for the Defendant.
17 Defendant failed to schedule Plaintiff and Aggrieved Employees in such a manner that allowed
18 Plaintiff and Aggrieved Employees to be relieved of their shift immediately, thereby causing
19 Plaintiff and Aggrieved Employees to work in excess of eight (8) hours per day and/or forty (40)
20 hours per week.

21 30. Specifically, Plaintiff and Aggrieved Employees routinely worked shifts in excess
22 of twelve (12) hours, but Defendant failed to pay double-time rates. All hours were paid at the
23 employees' regular rate of pay or overtime rate.

24 31. Furthermore, Plaintiff and Aggrieved Employees were also frequently required to
25 work through meal and rest periods for which Defendant required at least thirty (30) minutes be
26 deducted from the time recorded, resulting in additional unpaid wages. Additional time was
27 worked by Plaintiff and Aggrieved Employees which they were not permitted to record on time
28 records also resulting in unpaid wages.

1 32. As such, Plaintiff and Aggrieved Employees seek overtime in an amount
2 according to proof. Pursuant to Labor Code section 1194, the Aggrieved Employees seek the
3 payment of all overtime compensation which they earned and accrued four (4) years prior to filing
4 this Complaint, according to proof, as part of the civil penalty pursuant to Labor Code section
5 558, subdivision (a).

6 33. Since the LWDA has not indicated that it will be investigating and it has been
7 more than 65 days since Plaintiff mailed his letter, and because Defendant took no corrective
8 action to remedy the allegations set forth above, Plaintiff, as a representative of the people of the
9 State of California, will seek any and all penalties otherwise capable of being collected by the
10 Labor Commission, the LWDA and/or the Department of Labor Standards Enforcement
11 (“DLSE”). This includes each of the following, as set forth in Labor Code section 2699.5, which
12 provides that section 2699.3, subdivision (a) applies to any alleged violation of the following
13 provisions: 510 and 1194.

14 34. Plaintiff is informed and believes that Defendant has violated, and continues to
15 violate, provisions of the California Labor Code and applicable Wage Orders related to the
16 payment of minimum wages and overtime.

17 35. Plaintiff, as a personal representative of the general public, will and does seek to
18 recover any and all penalties for each and every violation shown to exist or to have occurred
19 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
20 otherwise only available to public agency enforcement actions. Funds recovered will be
21 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
22 reimbursed to the LWDA.

23 36. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees
24 and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment
25 interest.

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**Violation of PAGA for Failure to Provide Meal Periods or Compensation in Lieu Thereof,
Cal. Labor Code §§ 226.7 And 512
(Plaintiff against Defendant and DOES 1-50)**

38. Labor Code sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second meal period of not less than thirty (30) minutes.

40. The burden to prove that a meal or rest period violation has occurred normally rests on the Plaintiff. However, under *Safeway, Inc. v. Superior Court* (2015) 238 Cal App 4th 1138, 1159-60, where an employer fails to keep accurate records of meal and rest periods, a presumption of meal and rest period violations is created, shifting the burden to the employer to prove that meal and rest period violations did not occur.

42. Defendant failed to keep accurate records of the meal periods taken by Plaintiff and Aggrieved Employees.

1 43. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more
2 than five (5) hours in a workday.

3 44. At varying times relevant hereto, Plaintiff and Aggrieved Employees have worked
4 more than ten (10) hours in a workday.

5 45. At all times relevant hereto, Defendant, failed to schedule non-exempt positions
6 in a manner so as to reasonably provide meal and/or work free meal periods as required by Labor
7 Code sections 226.7 and 512.

8 46. Defendant's failure to schedule Plaintiff and Aggrieved Employees in such a way
9 as to provide meal periods, and/or work free meal periods to Plaintiff and Aggrieved Employees,
10 and/or to provide on-duty meal periods in accordance with the applicable Wage Order, has caused
11 Plaintiff and Aggrieved Employees to suffer, and continue to suffer, damages in amounts which
12 are presently unknown, but which exceed the jurisdictional limits of this Court and which will be
13 ascertained according to proof at trial.

14 47. Further, Defendant's failure to maintain accurate records of the meal periods taken
15 by Plaintiff and Aggrieved Employees creates a presumption of the violations having occurred
16 and shifts the burden to Defendant to prove they did not occur.

17 48. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
18 recovery of meal period compensation pursuant to Labor Code section 226.7 which they are owed
19 beginning four (4) years prior to filing this Complaint as well as the assessment of any statutory
20 penalties against these Defendant, and each of them, in a sum as provided by the Labor Code
21 and/or other statutes.

22 49. Since the LWDA has not indicated that it will be investigating and 65 days have
23 passed since Plaintiff mailed his letter, and because Defendant took no corrective action to
24 remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of
25 California, will seek any and all penalties otherwise capable of being collected by the Labor
26 Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE").
27 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
28 that section 2699.3, subdivision (a) applies to any alleged violation of the following provisions:

1 510 and 1194.

2 50. Plaintiff, as a personal representative of the general public, will and does seek to
3 recover any and all penalties for each and every violation shown to exist or to have occurred
4 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
5 otherwise only available to public agency enforcement actions. Funds recovered will be
6 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
7 reimbursed to the LWDA.

8 51. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
9 and costs pursuant to Labor Code sections 2699, subdivision (g)(1), and prejudgment interest.

10 **THIRD CAUSE OF ACTION**

11 **Violation of PAGA for Failure to Provide Rest Period or Compensation in Lieu Thereof,**

12 **Cal. Labor Code §§ 226.7 And 512**

13 **(Plaintiff against Defendant and DOES 1-50)**

14 52. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
15 preceding paragraphs of this Complaint as if fully set forth herein.

16 53. Labor Code section 226.7 provides that employers authorize and permit all
17 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

18 54. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
19 provide an employee rest periods in accordance with this section, the employer shall pay the
20 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
21 that the rest period is not provided.

22 55. Defendant, and each of them, failed and or refused to implement a relief system
23 by which Plaintiff and Aggrieved Employees could receive rest periods and/or work free rest
24 periods. Defendant denied Plaintiff and Aggrieved Employees duty free rest periods by
25 interrupting Plaintiff and Aggrieved Employees' rest periods. By and through its actions,
26 Defendant intentionally and improperly denied duty free rest periods to the Plaintiff and
27 Aggrieved Employees in violation of Labor Code sections 226.7 and 512.

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1 56. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked
2 more than four (4) hours in a workday.

3 57. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
4 and Aggrieved Employees as a result of their scheduling and shift relief system, Plaintiff and
5 Aggrieved Employees have suffered, and will continue to suffer, damages, in amounts which are
6 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
7 ascertained according to proof at trial.

8 58. Plaintiff, by virtue of Plaintiff's employment with Defendant, Defendant's failure
9 to provide Plaintiff and Aggrieved Employees with rest breaks, and Defendant's policy of
10 requiring employees to work through their rest periods without receiving compensation in lieu
11 thereof, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has
12 satisfied all prerequisites to serve as a representative of the general public to enforce California's
13 labor laws, and the penalty provisions identified in Labor Code section 2699.5.

14 59. Plaintiff, as a representative of the people of the State of California, will seek any
15 and all penalties otherwise capable of being collected by the Labor Commission, the LWDA
16 and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5,
17 which provides that section 2699.3, subdivision (a) applies to any alleged violation of the
18 following provisions: 226.7 and 512.

19 60. Plaintiff, as a personal representative of the general public, will and does seek to
20 recover any and all penalties for each and every violation shown to exist or to have occurred
21 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
22 otherwise only available to public agency enforcement actions. Funds recovered will be
23 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
24 reimbursed to the LWDA.

25 61. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
26 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

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1 **FOURTH CAUSE OF ACTION**

2 **Violation of PAGA for Failure to Provide Accurate Wage Statements,**

3 **Cal. Labor Code § 1174 And 226 (A), (E)**

4 **(Plaintiff against Defendant and DOES 1-50)**

5 62. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
6 preceding paragraphs of this Complaint as if fully set forth herein.

7 63. Labor Code section 226, subsection (a) states in pertinent part that, “every
8 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
9 employees, either as a detachable part of the check, draft, or voucher paying the employee’s
10 wages, or separately when wages are paid by personal check or cash, an accurate itemized
11 statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee . .
12 . ; (3) the number of piece-rate units earned . . . ; (4) all deductions . . . ; (5) net wages; (6) the
13 inclusive dates of the period for which the employee is paid; (7) the name of the employee and
14 only the last four digits of his or her social security number or an employee identification number
15 other than a social security number; (8) the name and address of the legal entity that is the
16 employer . . . ; and (9) all applicable hourly rates in effect during the pay period and corresponding
17 number of hours worked at each hourly rate by the employee...” (Lab. Code, § 226.)

18 64. Defendant knowingly and intentionally failed to provide timely and accurate
19 itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code
20 section 226, subsection (a) by failing to record the accurate number of hours worked, the accurate
21 rate of pay for each hour worked, the accurate amount of premiums wages earned, the accurate
22 net pay, and the accurate gross pay. Such failure caused injury to Plaintiff and Aggrieved
23 Employees.

24 65. Plaintiff and Aggrieved Employees are entitled to damages under Labor Code
25 section 226 subsection (a) and the greater of all actual damages or fifty dollars (\$50.00) for the
26 initial pay period in which a violation occurs and one-hundred (\$100.00) per employee for each
27 violation in each subsequent pay period, pursuant to Labor Code section 226, subdivision (e).

28 66. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee

1 with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve
2 as a representative of the general public to enforce California's labor laws, and the penalty
3 provisions identified in Labor Code section 2699.5.

4 67. Plaintiff, as a representative of the people of the State of California, will seek any
5 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
6 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
7 that section 2699.3, subdivision (a) applies to any alleged violation of the following provisions:
8 201, 202, 203, 226, 226.7, 510, 512, 1174, and 1194.

9 68. Plaintiff, as a personal representative of the general public, will and does seek to
10 recover any and all penalties for each and every violation shown to exist or to have occurred
11 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
12 otherwise only available to public agency enforcement actions. Funds recovered will be
13 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
14 reimbursed to the LWDA.

15 69. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
16 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

17 **FIFTH CAUSE OF ACTION**

18 **Violation of PAGA for Failure to Pay Wages of Terminated or Resigned Employees,**

19 **Cal. Labor Code §§ 201-203**

20 **(Plaintiff against Defendant and Does 1-50)**

21 70. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
22 preceding paragraphs of this Complaint as if fully set forth herein.

23 71. Plaintiff and certain members of the Aggrieved Employees who ended their
24 employment with Defendant during the Relevant Time Period were entitled to be promptly paid
25 both minimum wage and lawful overtime compensation and other premiums, as required by Labor
26 Code sections 201, 202, and 203.

27 72. Defendant refused and/or failed to promptly compensate Plaintiff and Aggrieved
28 Employees wages owed as a result of Defendant's failure to provide meal and/or rest periods as

1 well as pay both minimum and overtime compensation owed for work performed for Defendant.

2 73. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee
3 with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve
4 as a representative of the general public to enforce California's labor laws, and the penalty
5 provisions identified in Labor Code section 2699.5.

6 74. Plaintiff, as a representative of the people of the State of California, will seek any
7 and all penalties otherwise capable of being collected by the Labor Commission and/or the
8 DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which
9 provides that section 2699.3, subdivision (a) applies to any alleged violation of the following
10 provisions: 201, 202, 203, 226, 226.7, 510, 512, 1174, and 1194.

11 75. Plaintiff, as a personal representative of the general public, will and does seek to
12 recover any and all penalties for each and every violation shown to exist or to have occurred
13 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
14 otherwise only available to public agency enforcement actions. Funds recovered will be
15 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
16 reimbursed to the LWDA.

17 76. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
18 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

19 **SIXTH CAUSE OF ACTION**

20 **Violation of PAGA for Failure to Reimburse for Necessary Expenditures,**

21 **Cal. Labor Code § 2802**

22 **(Plaintiff against Defendant and DOES 1-50)**

23 77. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
24 preceding paragraphs of this Complaint as if fully set forth herein.

25 78. Labor Code section 2802 states, "An employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct consequence
27 of the discharge of his or her duties..."

28 79. Plaintiff and the Aggrieved Employees were not reimbursed by Defendant for

1 necessary expenditures as a direct consequence of the discharge of their duties.

2 80. Defendant knowingly, willingly and intentionally attempted to offset the cost of
3 doing business on the Plaintiff and Aggrieved Employees.

4 81. Defendant had a practice and policy of requiring Plaintiff and Aggrieved
5 Employees to shoulder the burden of Defendant's cost of doing business by failing to reimburse
6 Plaintiff and Aggrieved Employees for necessary business expenditures, specifically the cost of
7 cell phone and cell phone service provider purchase by Plaintiff and Aggrieved Employees for
8 use in their employment.

9 82. Accordingly, Plaintiff and Aggrieved Employees are entitled to an award of
10 "necessary expenditures or losses" shall include all reasonable costs, including, but not limited
11 to, attorney's fees and interest.

12 83. Plaintiff by virtue of his employment with Defendant and the Defendant's policy
13 of requiring Plaintiff and Aggrieved Employees to shoulder the burden of Defendant's cost of
14 doing business by failing to reimburse Plaintiff and Aggrieved Employees for necessary
15 expenditures, is an aggrieved employee with standing to bring an action under the PAGA.
16 Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce
17 California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

18 84. Plaintiff, as a representative of the people of the State of California, will seek any
19 and all penalties otherwise capable of being collected by the Labor Commission and/or the
20 DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which
21 provides that section 2699.3, subdivision (a) applies to any alleged violation of the following
22 provisions: 201, 202, 203, 226, 226.7, 510, 512, 1174, and 1194.

23 85. Plaintiff, as a personal representative of the general public, will and does seek to
24 recover any and all penalties for each and every violation shown to exist or to have occurred
25 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
26 otherwise only available to public agency enforcement actions. Funds recovered will be
27 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
28 reimbursed to the LWDA.

86. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Aggrieved Employees pray for judgment as follows:

1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as provided by law, including but not limited to, those civil penalties provided by statute, provided by PAGA and for unpaid wages pursuant to Labor Code section 558;
2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699, subdivision (g) and any other statutory basis or pursuant to the California Rules of Court;
3. For reasonable attorneys' fees pursuant to Labor Code section 2699, subdivision (g) and any other statutory basis, and;
4. For all such other and further relief as the Court may deem just and proper.

Dated: November 15, 2021

MAHONEY LAW GROUP, APC


Kevin Mahoney, Esq.

Kevin Mahoney, Esq.

Michael A. Swift, Esq.

Attorneys for Plaintiff ARTURO MARTINEZ
and on behalf of all employees similarly situated

EXHIBIT A



Michael Swift, Esq.
562.590.5550 phone
562.590.8400 facsimile
mswift@mahoney-law.net

September 9, 2021

VIA ELECTRONIC FILING

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

<https://dir.tfaforms.net/308>

VIA CERTIFIED MAIL #7019 2970 0000 2983 4519

Return Receipt Requested

Legacy Farms Employment Services Company, Inc.
1765 West Penhall Way
Anaheim, CA 92801

Re: Arturo Martinez v. Legacy Farms Employment Services Company, Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 et seq.**

To: California Labor and Workforce Development Agency, Legacy Farms Employment Services Company, Inc.

From: Arturo Martinez on behalf of himself and all other aggrieved employees.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Arturo Martinez ("Mr. Martinez"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA") on behalf of himself and all other aggrieved employees.

Legacy Farms Employment Services Company, Inc. ("Employer"), is a produce packaging corporation. (California Secretary of State, Statement of Information ("SOI") California Corporate No. C4003440.) Upon information and belief, Employer employs over 80 individuals. Employer's principal office is located at 1765 West Penhall Way, Anaheim, CA 92801.

Theories of Labor Code Violations and Remedies

Mr. Martinez alleges Employer violated various sections of the Labor Code, including sections 202, 203, 204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 2802 and relevant Industrial Welfare Commission ("IWC") Wage Orders by failing to provide Mr. Martinez and all other aggrieved employees all wages for all hours worked including, but not limited to, overtime wages, regular hours, meal and rest

period premium pay, and reimbursement for necessary business expenditures. Mr. Martinez also alleges Employer violated the Labor Code for failing to provide accurate wage statements, including accurate accounting of employees' hours and pay. Mr. Martinez worked for Employer as a packer and a general maintenance/mechanic from approximately 2007 to October 12, 2021. Mr. Martinez and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer as non-exempt employees during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

Based on currently available information, Employer failed to pay Mr. Martinez and other aggrieved employees for all hours worked at the legally mandated wage rates. Specifically, Employer failed to pay Mr. Martinez and his co-workers the legally mandated regular, overtime, and double time rates for all work performed during their shifts in violation of California law. Mr. Martinez and similarly aggrieved employees regularly were required to work during their meal breaks without compensation. Mr. Martinez and his co-workers were required to work off the clock as they were routinely sent tasks that had not yet been completed to their cell phone requiring Mr. Martinez and his co-workers to work off the clock to complete all assigned tasks. Additionally, Employer failed to compensate Mr. Martinez and other aggrieved employees the double time rate of pay for all hours worked beyond the twelfth (12th) hour of work for each shift. As a result, Employer violated Labor Code sections 1182.12, 1194, 1197 and 510, and applicable IWC Wage Orders, subject to penalties under Labor Code section 558, and actionable under PAGA.

Mr. Martinez and other aggrieved employees also regularly worked during meal and rest periods due to Employer's policy and practices which prioritized work tasks over rest and meal period compliance. When Mr. Martinez and other aggrieved employees were instructed to go on break they were often interrupted by another supervisor to continue to do work. Mr. Martinez and other aggrieved employees never agreed to waive their meal periods, nor were asked by Employer to sign a waiver. Mr. Martinez and other aggrieved employees were not paid premiums for the missed meal and rest periods. As a result of these policies and practices, Employer violated Labor Code sections 226.7 and 512, and applicable IWC Wage Orders, and is actionable under PAGA.

As a result of Employer's failure to pay all wages owed as described herein, Employer further failed to keep accurate payroll records and failed to provide Mr. Martinez and other aggrieved employees with complete and accurate wage statements showing the true number of hours worked and accurate overtime, double time, and premium wages earned per pay period. These blatant inaccuracies in Mr. Martinez's and other aggrieved employees' wage statements is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

As a further result of Employer's failure to pay all wages owed as described herein, Employer violated Labor Code sections 202, and 203 by failing to pay all wages earned to former employees at or around the time of their separation from Employer.

Mr. Martinez also alleges that he and other similarly aggrieved employees were required to pay for necessary business expenditures for which Employer failed to compensate them. Mr. Martinez was required to use his personal cellphone to communicate with coworkers, all without reimbursement from Employer. Employer's failure to provide full and complete reimbursement for all necessary business expenditures incurred by Mr. Martinez and other similarly aggrieved employees is in violation of Labor Code § 2802, and actionable under PAGA.

The facts and claims contained herein are based on information available as of the date of this letter. If through discovery and/or expert review, Mr. Martinez becomes aware of additional compensation owed or losses incurred by Mr. Martinez or by any other similarly aggrieved employee, Mr. Martinez expressly reserves the right to revise these facts and/or add any new claims by amending her claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Mr. Martinez will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by Legacy Farms Employment Services Company, Inc. Please advise if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Swift".

Michael A. Swift, Esq.
MAHONEY LAW GROUP, APC