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FILED
 KERN COUNTY SUPERIOR COURT
 09/13/2022
 BY Villalon, Maribel
 DEPUTY

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Attorneys for Plaintiffs,
 ANDRES LUNA, SR., MARIA SOLEDAD LUNA,
 ANDRES LUNA, JR., and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF KERN
 (UNLIMITED JURISDICTION)**

ANDRES LUNA, SR., MARIA SOLEDAD
 LUNA, ANDRES LUNA, JR. on behalf of
 themselves and all others similarly situated, and
 as an “aggrieved employee” on behalf of other
 “aggrieved employees” under the Labor Code
 Private Attorneys General Act of 2004,

Case No. BCV-22-100618

CLASS ACTION

**~~PROPOSED~~ FIRST AMENDED
 COMPLAINT FOR:**

Plaintiff(s),
 vs.
 GREEN AG, INC., a California corporation, and
 DOES 1–50, inclusive,
Defendant(s).

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 226.2, 510, 1182.12, 1194, 1197, and 1198);
2. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
3. Wage Statement Penalties (Lab. Code §§ 226 and 226.2);
4. Waiting Time Penalties (Lab. Code §§ 201-203);
5. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
6. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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1 Plaintiff, ANDRES LUNA, SR., Plaintiff MARIA SOLEDAD LUNA, and Plaintiff
2 ANDRES LUNA, JR. (collectively referred to as “Plaintiffs”) on behalf of themselves and all
3 others similarly situated, complains and allege as follows:

4 **I. INTRODUCTION**

5 1. Plaintiffs bring this class and representative action for alleged violations of the
6 California Labor Code, Industrial Welfare Commission Order No. 14-2001 (hereafter “the Wage
7 Order”), and the California Business and Professions Code against Defendants Green AG, Inc.
8 and Does 1 through 50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiffs allege that Defendants are liable to
10 them and other similarly situated workers for unpaid wages, statutory penalties, interest, and
11 related relief. These claims are based on Defendants’ failures to:

12 (A) Pay all wages, including minimum, regular, and overtime wages, earned
13 for all hours worked at the correct rates of pay;

14 (B) Separately compensate for rest and recovery periods and other non-
15 productive time and itemize such information on wage statements;

16 (C) Indemnify for necessary work-related expenditures;

17 (D) Issue accurate and complete itemized wage statements;

18 (E) Timely pay wages upon termination of employment;

19 Accordingly, Plaintiffs now seek to recover unpaid wages, interest, liquidated damages,
20 restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class
21 and representative action.

22 **II. THE PARTIES**

23 3. Plaintiff Andres Luna, Sr. (hereafter “Plaintiff Luna Sr.”) is a resident of
24 California. At all relevant times, Plaintiff Luna Sr. was an “employee” within the meaning of Title
25 8 California Code of Regulations Section 11160 and an “aggrieved employee” within the meaning
26 of Labor Code Section 2699(c).

27 4. Plaintiff Maria Soledad Luna. (hereafter “Plaintiff Soledad”) is a resident of
28 California. At all relevant times, Plaintiff Soledad was an “employee” within the meaning of Title
8 California Code of Regulations Section 11160 and an “aggrieved employee” within the meaning
of Labor Code Section 2699(c).

5. Plaintiff Andres Luna, Jr. (hereafter “Plaintiff Luna Jr.”) is a resident of California.



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1 At all relevant times, Plaintiff Luna Jr. was an “employee” within the meaning of Title 8
2 California Code of Regulations Section 11160 and an “aggrieved employee” within the meaning
3 of Labor Code Section 2699(c).

4 6. Defendant Green AG, Inc. is organized and existing under the laws of California
5 and also a citizen of California based on Plaintiffs’ information and belief.

6 7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
7 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
8 are informed and believe and thereon allege that said Defendants are legally responsible for the
9 wrongful conduct alleged herein and therefore sue these Defendants by such fictitious names.
10 Plaintiffs will amend the Complaint to allege the true names and capacities of the DOE
11 Defendants when ascertained.

12 8. Plaintiffs are informed and believe and thereon allege that, at all relevant times
13 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
14 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
15 within the course and scope of such agency, employment, direction and control, and with the
16 approval and ratification of each of the other Defendants.

17 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
18 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
19 of a practice which resulted in Defendants not compensating Plaintiffs and the other Class
20 Members or otherwise complying with their rights in accordance with applicable California labor
21 laws as alleged herein.

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

26 **III. CLASS ALLEGATIONS**

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



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12. **Class Definition:** The Class is defined as follows: All persons Defendants employed or otherwise contracted with in California as non-exempt, hourly and piece rate employees, including but not limited to farm workers, fruit pickers, harvesters, individuals performing work comparable to the aforementioned, and individuals in similar positions at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

13. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiffs reserve the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

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

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

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay, including minimum, regular, overtime, rest and recovery and nonproductive time wages;

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

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

D. Whether Defendants willfully failed to pay the class timely final wages;

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

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

16. **Typicality:** Plaintiffs’ claims are typical of the other Class Members’ claims. Plaintiffs are informed and believe and thereon allege that Defendants have a policy and/or practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor



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Code, the Wage Order, and the Business and Professions Code.

17. **Adequacy of Class Representative:** Plaintiffs are adequate class representative in that they have no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiffs are dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiffs will fairly and adequately represent and protect the interests of Class Members.

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

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

IV. STATEMENT OF FACTS

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

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



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and dusting;

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

Wage Order, § 2(D). At all relevant times during the applicable limitations period, Defendants, Plaintiffs and all of the other Class Members were covered by the Wage Order because the Defendants operated, and Plaintiffs, and all of the other Class Members worked for, one or more farm establishments. Accordingly, Plaintiffs and all of the other Class Members are entitled to the protections the Wage Order provides.

21. In or around 2019, the Defendants began to employ Plaintiffs in Bakersfield in the position of hourly and piece rate, non-exempt fruit pickers. The Defendants continuously employed them in that capacity until on or about August 3, 2021, when their employment ended.

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

23. At all relevant times, the Defendants failed to compensate Plaintiffs and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. Defendants only paid Plaintiffs and the other Class Members for forty hours per week and failed to pay for any hours worked beyond those forty hours. Defendants' failure to pay for these hours



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1 also extended to the relevant overtime hours for agricultural workers as defined by Wage Order
2 14. In 2019, for weeks where Plaintiffs and the other Class Members worked over 55 hours,
3 Defendants failed to pay Plaintiffs and the other Class Members their overtime wages. In 2020,
4 for weeks where Plaintiffs and the other Class Members worked over 50 hours, Defendants failed
5 to pay Plaintiffs and the other Class Members their overtime wages. In 2021, for weeks where
6 Plaintiffs and the other Class Members worked over 45 hours, Defendants failed to pay Plaintiffs
and the other Class Members their overtime wages.

7 24. At all relevant times, the Defendants required Plaintiffs and all of the other Class
8 Members to incur certain business expenses in the course of performing their duties. The
9 Defendants required Plaintiffs and all of the other Class Members to supply tools such as scissors,
10 protective gear such as gloves, and comparable items to perform their job duties. However, the
11 Defendants did not provide these necessary items and did not reimburse Plaintiffs and the other
12 Class Members for these expenses.

13 25. At all relevant times, the Defendants failed to issue to Plaintiffs and all of the other
14 Class Members complete and accurate wage statements that state all hours worked at the correct
15 rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the
16 wage statements they issued to Plaintiffs and all of the other Class Members the unpaid wages
17 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
18 earned, all overtime wages earned, all hours work at each rate of pay, gross wages earned, net
19 wages earned, and related information. Defendants failed to state on the wage statements issued
20 to Plaintiffs and the other Class Members the correct number of hours worked, the correct
minimum wages earned, the correct regular wages earned, and the correct overtime wages earned.

21 26. At all relevant times, Defendants failed to provide Plaintiffs and all of the other
22 Class Members with statements of the total hours of compensable rest and recovery periods, the
23 rate of compensation, and the gross and net wages paid for those activities during the pay period.
24 As stated above, Defendants paid Plaintiffs and the Class Members by a piece rate that did not
25 separately compensate them for rest and recovery time and other non-productive time. Defendants
did not separately state in wage statements they issued or other documents they issued to Plaintiffs
and the Class Members the amounts paid for rest and recovery time and other non-productive
time.

26 27. At all relevant times, the Defendants also failed to timely pay Plaintiffs and all of



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1 the other Class Members all earned wages as described above during and at the conclusion of
2 employment. Defendants failed to pay Plaintiffs and the other Class Members minimum wages,
3 regular pay, or overtime wages and rest and recovery wages for all hours worked. Defendants also
4 failed to timely pay Plaintiffs and the other Class Members their final wages upon the end of the
employment relationship.

5 28. At all relevant times, the Defendants failed to maintain accurate employee records
6 of Plaintiffs and all of the other Class Members.

7 29. For the reasons stated herein, Plaintiffs allege that as a result of Defendants'
8 unlawful practices and policies, Plaintiffs and the Class Members were:

9 a. Not paid all wages earned, including, but not limited to, minimum, regular,
10 overtime, and doubletime wages for work performed while clocked out;

11 b. Not indemnified for all necessary business expenditures incurred during
12 the discharge of their duties;

13 c. Not provided with accurate and complete wage statements; and

14 d. Not timely paid all earned and unpaid wages at the time their employment
ended.

15 **FIRST CAUSE OF ACTION**

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

18 **Lab. Code §§ 226.2, 510, 1182.12, 1194, 1197, and 1198**

19 **(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)**

20 30. Plaintiffs incorporate all paragraphs of this First Amended Complaint as if fully
21 alleged herein.

22 31. At all relevant times, Plaintiffs and the Class Members have been non-exempt
employees entitled to the protections of both the Labor Code and the Wage Order.

23 32. Section 2 of the Wage Order defines "hours worked" as "the time during which an
24 employee is subject to the control of an employer, and includes all the time the employee is
25 suffered or permitted to work, whether or not required to do so."

26 33. Section 3 of the Wage Order states:

27 (A) The following overtime provisions are applicable to employees eighteen
28 (18) years of age or over and to employees sixteen (16) or seventeen (17)



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years of age who are not required by law to attend school:

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

(2) For employers of more than 25 employees:

(a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.

(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

(c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

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



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(3) For employers of 25 or fewer employees:

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

...

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

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

35. Labor Code section 510 states:

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

1 than one rate of overtime compensation in order to calculate the amount to be paid
2 to an employee for any hour of overtime work.

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

5 37. Section 1182.12 of the Labor Code establishes the hourly minimum wage rate for
6 non-exempt employees.

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

10 39. Labor Code section 1198 makes it unlawful for an employer to employ an
11 employee under conditions that violate the Wage Order.

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

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

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

18 ...

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

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

(ii) The applicable minimum wage.

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



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1 Cal.4th 575, 585.)

2 42. At all relevant times during the applicable limitations period, Defendants failed to
3 compensate Plaintiffs and the Class Members for all hours worked, including, but not limited to
4 minimum, regular, overtime and doubletime wages for all minimum, regular, and overtime hours,
5 respectively, that they worked at the correct rates of pay.

6 43. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
7 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
8 failure to compensate Plaintiffs and the other Class Members for all hours worked at the correct
9 rates of pay as required by California law.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO INDEMNIFY**

12 **Lab. Code § 2802**

13 **(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)**

14 44. Plaintiffs incorporate all paragraphs of this First Amended Complaint as if fully
15 alleged herein.

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

19 46. Additionally, the Wage Order states,

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

23 ...

24 (B) When tools or equipment are required by the employer or are necessary to
25 the performance of a job, such tools and equipment shall be provided and
26 maintained by the employer, except that an employee whose wages are at
27 least two (2) times the minimum wage provided herein may be required to
28 provide and maintain hand tools and equipment customarily required by
the trade or craft.

Wage Order, § 9(A) and (B).

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



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- 1 orders of the Employee may be aggregated and shown as one item;
- 2 5. Net wages earned;
- 3 6. The inclusive dates of the period for which the employee is paid;
- 4 7. The name of the employee and his or her social security number,
- 5 except that by January 1, 2008, only the last four digits of his or
- 6 her social security number or an employee identification number
- 7 other than a social security number may be shown on the itemized
- 8 statement;
- 9 8. The name and address of the legal entity that is the employer and,
- 10 if the employer is a farm labor contractor, as defined in subdivision
- 11 (b) of Section 1682, the name and address of the legal entity that
- 12 secured the services of the employer; and
- 13 9. All applicable hourly rates in effect during the pay period and the
- 14 corresponding number of hours worked at each hourly rate by the
- 15 employee.

16 Lab. Code § 266(a).

17 53. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
18 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
19 the employer fails to provide accurate and complete information as required by California Labor
20 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
21 alone one or more of the following:

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

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

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

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

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

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

4 55. As alleged herein, at all relevant times during the applicable limitations period,
5 Defendants violated California Labor Code section 226 because they did not properly and
6 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
7 the corresponding number of hours worked at each rate by the employee and other requirements
8 of California Labor Code section 226. Defendants failed to state in the wage statements they
9 issued to Plaintiffs and the other Class Members all their hours worked and wages earned,
10 including, but not limited to, regular and overtime wages for work they performed off-the-clock
11 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
12 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
13 separately if wages are paid by personal check or cash, statements to Plaintiffs and the Class
14 Members that state all minimum wages earned, all regular wages earned, all overtime wages
15 earned, all hours worked at each rate of pay, gross wages earned, and net wages earned.
16 Defendants failed to state on the wage statements issued to Plaintiffs and the other Class Members
17 the correct number of hours worked, the correct minimum wages earned, the correct regular wages
18 earned, and the correct overtime wages earned.

19 56. Defendants’ failure to provide Plaintiffs and the other Class Members with
20 accurate wage statements was knowing and intentional. Defendants had the ability to provide
21 Plaintiffs and the other Class Members with accurate wage statements but intentionally provided
22 wage statements that Defendants knew were not accurate.

23 57. Similarly, section 7(C) of the Wage Order states:

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

- 28 (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee’s social security number; and

(4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

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

58. As a result of being provided with inaccurate and incomplete wage statements by Defendants, Plaintiffs and the other Class Members have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiffs and the other Class Members were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

B. FAILURE TO PROVIDE WAGE STATEMENTS WITH REST AND RECOVERY TIME

59. Labor Code section 226.2 states

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

...

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

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

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



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1 **FOURTH CAUSE OF ACTION**

2 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

3 **Lab. Code §§ 201, 202, and 203**

4 **(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)**

5 61. Plaintiffs incorporate all paragraphs of this First Amended Complaint as if fully
6 alleged herein.

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

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

12 64. Labor Code § 202 provides that all earned and unpaid wages of an employee who
13 quits after providing at least 72-hours notice before quitting are due and payable at the time of
14 quitting and that all earned and unpaid wages of an employee who quits without providing at least
15 72-hours notice before quitting are due and payable within 72 hours.

16 65. The Defendants failed to pay Plaintiffs and all of the other Class Members whose
17 employment ended all of the earned but unpaid wages described above by the conclusion of their
18 employment, including minimum wages, regular wages, overtime wages, and rest and recovery
19 wages. Additionally, the Defendants failed to issue to Plaintiffs and all of the other Class members
20 whose employment ended their final paychecks. Plaintiffs did not receive any compensation for
21 the hours they worked on their last day employed with Defendants.

22 66. By failing to pay such earned wages to Plaintiffs and the Class Members,
23 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
24 § 201 or § 202.

25 67. Plaintiffs are informed and believe that Defendants' failures to timely pay
26 Plaintiffs and the Class Members all of their earned and unpaid wages (described above) have
27 been willful in that, at all relevant times, Defendants have deliberately maintained policies and
28 practices that violate the requirements of the Labor Code and the Wage Order, even though at all
relevant times, they have had the ability to comply with those legal requirements.

68. Pursuant to Labor Code § 203, Plaintiffs seek waiting time penalties on behalf of
themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time



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penalties for each Class Member.

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

Bus. & Prof. Code §§ 17200, *et seq.*

(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)

69. Plaintiffs incorporate all paragraphs of this First Amended Complaint as if fully alleged herein.

70. At all relevant times during the applicable limitations period, Plaintiffs and the Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

71. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

72. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and the Class Members have suffered injuries in fact and lost money or property. Plaintiffs and the Class Members were deprived of minimum wages, regular wages, overtime wages, rest and recovery wages reimbursement for business expenses, including but not limited to scissors and gloves, and comparable money and property.

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

74. Plaintiffs and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

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SIXTH CAUSE OF ACTION

CIVIL PENALTIES

Lab.Code §§ 2698, et seq.

(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)

75. Plaintiffs incorporate all paragraphs of this First Amended Complaint as if fully alleged herein.

76. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning November 8, 2020, and ending on the date that final judgment is entered in this action.

77. Labor Code § 204 states

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

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

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

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

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

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



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

3 79. During the applicable time period, Defendants violated California Labor Code §§
4 201, 202, 203, 204, 226, 226.2, 510, 1182.12, 1194, 1197, 1198, and 2802.

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

8 81. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the Class are
9 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
10 §§ 201, 202, 203, 204, 226, 226.2, 510, 1182.12, 1194, 1197, 1198, and 2802 during the applicable
11 limitations period in the following amounts:

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

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

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

28 D. For violations of California Labor Code §§ 201, 202, 203, 226.2, 510, 1194, 1198,
and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
period for each initial violation and two hundred dollars (\$200.00) for each
aggrieved employee per pay period for each subsequent violation (penalty amounts



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established by California Labor Code § 2699(f)(2)).

82. Plaintiffs have complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated November 8, 2021, Plaintiff Luna Sr. filed written notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff Luna Sr.’s written notice to the LWDA dated November 8, 2021, is attached as **Exhibit A**. Plaintiff Luna Sr. accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff Luna Sr.’s notice, but Plaintiff Luna Sr. anticipates that the LWDA will provide written notice to Plaintiff Luna Sr. informing him that it does not intend to investigate these allegations.

83. By letter dated March 24, 2022, Plaintiff Soledad filed written notice online with the LWDA and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff Soledad’s written notice to the LWDA dated March 24, 2022, is attached as **Exhibit B**. Plaintiff Soledad accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff Soledad’s notice, but Plaintiff Soledad anticipates that the LWDA will provide written notice to Plaintiffs informing her that it does not intend to investigate these allegations.

84. By letter dated March 28, 2022, Plaintiff Luna, Jr. filed written notice online with the LWDA and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff Luna, Jr.’s written notice to the LWDA dated March 28, 2022, is attached as **Exhibit C**. Plaintiff Luna, Jr. accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff Luna, Jr.’s notice, but Plaintiff Soledad anticipates that the LWDA will provide written notice to Plaintiff Luna, Jr. informing him that it does not intend to investigate these allegations.

85. Pursuant to California Labor Code § 2699(g), Plaintiffs and the aggrieved



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employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

86. WHEREFORE, Plaintiffs, on behalf of themselves and the Class Members, pray for relief and judgment against Defendants as follows:

- A. An order that the action be certified as a class action with respect to Plaintiffs' claims for violations of California law;
- B. An order that Plaintiffs be appointed class representatives;
- C. An order that counsel for Plaintiffs be appointed class counsel;
- D. Unpaid wages, including minimum, regular, overtime, double-time, non-productive time, and rest and recovery time;
- E. Liquidated damages;
- F. Statutory penalties, including waiting time penalties;
- G. Restitution;
- H. Declaratory relief;
- I. Actual damages;
- J. Civil Penalties;
- K. Pre-judgment interest;
- L. Costs of suit;
- M. Reasonable attorneys' fees; and
- N. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all other Class Members, hereby demand a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: August 31, 2022

By:



DAVID G. SPIVAK
CHRISTINA J. PREJEAN
Attorneys for Plaintiffs, ANDRES LUNA,
SR., MARIA SOLEDAD LUNA, ANDRES
LUNA, JR. and all others similarly situated



EXHIBIT A



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL ***

November 8, 2021

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

Re: Andres G. Luna / Green AG, Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Andres G. Luna (hereafter “Luna” or “Complainant”) provides notice that Green AG, Inc., and related entities (collectively “the Green AG Employers” or “the Employers”) violated his rights and those of all other individuals the Green AG Employers have employed or otherwise contracted with in California as non-exempt, hourly and piece rate employees including, but not limited to farm workers, fruit pickers, harvesters, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.2, 510, 1182.12, 1194, 1197, 1198, 2802, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Luna hereby provides this notice to the Labor & Workforce Development Agency and the Green AG Employers and their agents and representatives.

At all relevant times, the Green AG Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Luna and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No.

14-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

In or around 2019, the Green AG Employers began to employ Luna in Bakersfield in the position of hourly, non-exempt fruit picker. The Green AG Employers continuously employed him in that capacity until on or about August 3, 2021, when the employment relationship ended.

At all relevant times, the Green AG Employers issued wages to Luna and all of the other Aggrieved Employees on a weekly basis and paid them by the hour. At all relevant times, the Green AG Employers classified Luna and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Green AG Employers failed to compensate Luna and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Green AG Employers only paid Luna and the other Aggrieved Employees for forty hours per week and failed to pay for any hours worked beyond those forty hours. The Green AG Employers failure to pay for these hours also extended to the relevant overtime hours for agricultural workers as defined by Wage Order 14. In 2019, on weeks where Luna and the other Aggrieved Employees worked over 55 hours, the Green AG Employers failed to pay Luna and the other Aggrieved Employees their overtime wages. In 2020, on weeks where Luna and the other Aggrieved Employees worked over 50 hours, the Green AG Employers failed to pay Luna and the other Aggrieved Employees their overtime wages. In 2021, on weeks where Luna and the other Aggrieved Employees worked over 45 hours, the Green AG Employers failed to pay Luna and the other Aggrieved Employees their overtime wages.

At all relevant times, the Green AG Employers required Luna and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Green AG Employers required Luna and all of the other Aggrieved Employees to supply tools such as scissors, protective gear such as gloves, and comparable items to perform their job duties. However, the Green

AG Employers did not provide these items and did not reimburse Luna and the other Aggrieved Employees for these items. The Green AG Employers required Luna and the other Aggrieved Employees to use scissors and gloves to carry out their harvesting duties. The Green AG Employers failed to provide these necessary items and failed to reimburse Luna and the other Aggrieved Employees for these items.

At all relevant times, the Green AG Employers failed to issue to Luna and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Green AG Employers knowingly and intentionally failed to state on the wage statements they issued to Luna and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all hours work at each rate of pay, gross wages earned, and net wages earned. Green AG Employers failed to state on the wage statements issued to Luna and the other aggrieved employees the correct number of hours worked, the correct minimum wages earned, the correct regular wages earned, and the correct overtime wages earned.

The Green AG Employers also failed to timely pay Luna and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment. The Green AG Employers failed to pay Luna and the other Aggrieved Employees minimum wages, regular pay, or overtime wages for all hours worked. Furthermore, the Green AG Employers also failed to timely pay Luna and the other Aggrieved employees their final wages upon the end of the employment relationship.

The Green AG Employers failed to maintain accurate employee records of Luna and all of the other Aggrieved Employees.

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

- (a) The Green AG Employers failed to pay Luna and all of the other Aggrieved Employees all wages earned for all hours worked at the

correct rates of pay, including minimum, regular, overtime, and doubletime;

- (b) The Green AG Employers failed to indemnify Luna and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (c) The Green AG Employers knowingly and intentionally failed to provide Luna and all of the other Aggrieved Employees with accurate and complete wage statements;
- (d) The Green AG Employers willfully failed to timely pay Luna and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Green AG Employers and when their employment ended; and
- (e) The Green AG Employers failed to maintain accurate employment records pertaining to Luna and all of the other Aggrieved Employees.

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

The Wage Order

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

- (1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;
- (2) The sowing and planting of any agricultural or horticultural commodity;

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

Wage Order, § 2(D).

At all relevant times during the applicable limitations period, the Green AG, Inc. Employers, Luna, and all of the Aggrieved Employees were covered by the Wage Order because Luna and all of the Aggrieved Employees worked for the Green AG Employers as farm workers, fruit pickers, harvesters, and similar occupations. Accordingly, Luna and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

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

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

- (c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.
 - (d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.
- (3) For employers of 25 or fewer employees:
- (a) Starting January 1, 2022, the overtime standards and compensation in subsection (2)(a) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.
 - (b) Starting January 1, 2023, the overtime standards and compensation in subsection (2)(b) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.
 - (c) Starting January 1, 2024, the overtime standards and compensation in subsection (2)(c) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

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

...

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

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

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

Green AG Employers only paid Luna and the other Aggrieved Employees for forty hours of work per week and failed to pay Luna and the other Aggrieved Employees at least the minimum wage for any hours worked beyond forty hours. Furthermore, from January 1, 2021, through August 3, 2021, Green AG Employers failed to pay Luna and the other aggrieved employees any overtime premiums or the correct overtime premiums for hours worked beyond eight-and-a-half in a day or 45 per week.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in

addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Green AG Employers, Luna and all of the other Aggrieved Employees earned compensation for all hours worked, and related compensation during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Green AG Employers failed to pay Luna and all of the other Aggrieved Employees compensation for all hours worked, including, but not limited to minimum wages, regular wages, and overtime wages. The Green AG Employers also paid Luna and all of the other Aggrieved Employees a piece rate that ranged between approximately \$0.25 to \$0.36 per unit of harvested grapes. The Green AG Employers' piece rate payments often fell below applicable hourly minimum wage rates and the corresponding overtime rate. Thus, the Green AG Employers failed to compensate Luna and the other Aggrieved Employees with at least the minimum wage for the days on which Luna and the other Aggrieved Employees were paid a piece rate.

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

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

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

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

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

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

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

As described above, the Green AG Employers required Luna and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Green AG Employers required Luna and all of the other Aggrieved Employees to supply tools, protective gear, and similar items to perform their job duties. However, the Green AG Employers did not provide these items and did not reimburse Luna and the other Aggrieved Employees for these items. Luna and the other aggrieved employees were required to use scissors and gloves to carry out their harvesting duties. The Green AG Employers failed to provide these necessary items and failed to reimburse Luna and the other aggrieved employees for these expenses. Additionally, the Green AG Employers did not provide tools to Luna and the other Aggrieved Employees it required them to use to perform their work, nor did they reimburse them for such tools, including gloves and similar items. Accordingly, Luna seeks civil penalties for these Labor Code violations that the Green AG Employers have committed against him and all of the other Aggrieved Employees as follows:

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

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

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

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

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

Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check,

draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing:

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

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

At all relevant times during the applicable limitations period, the Green AG Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Green AG Employers failed to state in the wage statements they issued to Luna and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular wages for work they performed beyond forty hours per week (as described above). The Green AG Employers knowingly and intentionally failed to state on the wage statements they issued to Luna and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all hours work at each rate of pay, gross wages earned, net wages earned and similar information. Green AG Employers failed to state on the wage statements issued to Luna and the other aggrieved employees the correct minimum wages earned, the correct regular wages earned, and the correct overtime wages earned. Accordingly, Luna seeks civil penalties for the Labor Code violations that the Green AG Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code

section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

In relevant part, Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.
...
 - (3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:
 - (i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.
 - (ii) The applicable minimum wage.

At all relevant times during the applicable limitations period, the Green AG Employers failed to separately compensate Luna and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time, and related duties. The Green AG Employers often paid Luna and all of the other

Aggrieved Employees a rest and recovery rate that was below the average hourly rate or the applicable minimum wage.

Accordingly, Luna seeks civil penalties on behalf of himself and all of the other Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, subdivisions (a)(1) and (a)(4) and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

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

The Green AG Employers failed to compensate Luna and all of the other Aggrieved Employees for wages earned, including minimum wages and regular wages at the intervals stated above. As a result, the Green AG Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Luna now seeks civil penalties for the Labor Code violations that the Green AG Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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

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

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

The Green AG Employers failed to pay Luna and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Luna, including minimum wages, regular wages, and similar forms of compensation. Additionally, the Green AG Employers failed to issue to Luna and all of the other Aggrieved Employees whose employment ended their final paychecks. By failing to pay Luna and all of the other Aggrieved Employees as set forth above at the end of employment, the Green AG Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Luna seeks civil penalties from the Green AG Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which

subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

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

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

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

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an

employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

...

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

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

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

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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Conclusion

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

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Andres Luna, Sr
Louis Benowitz, Esq.

Green AG, Inc.
c/o Agent for service of process
Jose Martinez, Jr.
32994 Woollomes Ave.
Delano, CA 93215

EXHIBIT B



SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

March 24, 2022

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

Re: Maria Soledad Luna / Green AG, Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Maria Soledad Luna (hereafter “Mrs. Luna” or “Complainant”) provides notice that Green AG, Inc., and related entities (collectively “the Green AG Employers” or “the Employers”) violated her rights and those of all other individuals the Green AG Employers have employed or otherwise contracted with in California as non-exempt, hourly and piece rate employees including, but not limited to farm workers, fruit pickers, harvesters, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.2, 510, 1182.12, 1194, 1197, 1198, 2802, and related Labor Code statutes. On behalf of herself and all other Aggrieved Employees, Mrs. Luna hereby provides this notice to the Labor & Workforce Development Agency and the Green AG Employers and their agents and representatives.

At all relevant times, the Green AG Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Mrs. Luna and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 14-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

In or around 2019, the Green AG Employers began to employ Mrs. Luna in Bakersfield in the position of hourly, non-exempt fruit picker. The Green AG Employers continuously employed her in that capacity until on or about August 3, 2021, when the employment relationship ended.

At all relevant times, the Green AG Employers issued wages to Mrs. Luna and all of the other Aggrieved Employees on a weekly basis and paid them by the hour. At all relevant times, the Green AG Employers classified Mrs. Luna and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order. Mrs. Luna is informed and believes that the Green AG Employers employed 25 or more employees.

The Green AG Employers failed to compensate Mrs. Luna and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Green AG Employers only paid Mrs. Luna and the other Aggrieved Employees for forty hours per week and failed to pay for any hours worked beyond those forty hours. The Green AG Employers' failure to pay for these hours also extended to the relevant overtime hours for agricultural workers as defined by Wage Order 14. In 2019, on weeks where Mrs. Luna and the other Aggrieved Employees worked over 55 hours, the Green AG Employers failed to pay Mrs. Luna and the other Aggrieved Employees their overtime wages. In 2020, on weeks where Mrs. Luna and the other Aggrieved Employees worked over 50 hours, the Green AG Employers failed to pay Mrs. Luna and the other Aggrieved Employees their overtime wages. In 2021, on weeks where Mrs. Luna and the other Aggrieved Employees worked over 45 hours, the Green AG Employers failed to pay Mrs. Luna and the other Aggrieved Employees their overtime wages.

The Green AG Employers also paid Mrs. Luna and all of the other Aggrieved Employees a piece rate that ranged between approximately \$0.25 to \$0.36 per unit of harvested grapes. The Green AG Employers' piece rate payments often fell below applicable hourly minimum wage rates and the corresponding overtime rate. Thus, the Green AG Employers failed to compensate Mrs. Luna and the other Aggrieved Employees with at least the minimum wage for the days on which Mrs. Luna and the other Aggrieved Employees were paid a piece rate.

At all relevant times, the Green AG Employers required Mrs. Luna and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Green AG Employers required Mrs. Luna and all of the other Aggrieved Employees to supply tools such as scissors, protective gear such as gloves, and comparable items to perform their job duties. However, the Green AG Employers did not provide these items and did not reimburse Mrs. Luna and the other Aggrieved Employees for these items. The Green AG Employers required Mrs. Luna and the other Aggrieved Employees to use scissors and gloves to carry out their harvesting duties. The Green AG Employers failed to provide these necessary items and failed to reimburse Mrs. Luna and the other Aggrieved Employees for these items.

At all relevant times, the Green AG Employers failed to issue to Mrs. Luna and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Green AG Employers knowingly and intentionally failed to state on the wage statements they issued to Mrs. Luna and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all hours work at each rate of pay, gross wages earned, and net wages earned. Green AG Employers failed to state on the wage statements issued to Mrs. Luna and the other aggrieved employees the correct number of hours worked, the correct minimum wages earned, the correct regular wages earned, and the correct overtime wages earned.

The Green AG Employers failed to provide Mrs. Luna and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross and net wages paid for those activities during the pay period

The Green AG Employers also failed to timely pay Mrs. Luna and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment. The Green AG Employers failed to pay Mrs. Luna and the other Aggrieved Employees minimum wages, regular pay, or overtime wages for all hours worked. Furthermore, the Green AG Employers also failed to timely pay Mrs. Luna and the other Aggrieved employees their final wages upon the end of the employment relationship.

The Green AG Employers failed to maintain accurate employee records of Mrs. Luna and all of the other Aggrieved Employees.

For the reasons stated herein, Mrs. Luna alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Green AG Employers failed to pay Mrs. Luna and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime;
- (b) The Green AG Employers failed to separately compensate Mrs. Luna and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time;
- (c) The Green AG Employers failed to indemnify Mrs. Luna and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (d) The Green AG Employers knowingly and intentionally failed to provide Mrs. Luna and all of the other Aggrieved Employees with accurate and complete wage statements;
- (e) The Green AG Employers willfully failed to timely pay Mrs. Luna and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Green AG Employers and when their employment ended; and
- (f) The Green AG Employers failed to maintain accurate employment records pertaining to Mrs. Luna and all of the other Aggrieved Employees.

Accordingly, Mrs. Luna now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Green AG Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

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

- (1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;
- (2) The sowing and planting of any agricultural or horticultural commodity;
- (3) The care of any agricultural or horticultural commodity,; as used in this subdivision, “care” includes, but is not limited to, cultivation, irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;
- (4) The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;
- (5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;
- (6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing, handling eggs, and extracting honey;
- (7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;
- (8) The conservation, improvement or maintenance of such farm and its tools and equipment.

Wage Order, § 2(D).

At all relevant times during the applicable limitations period, the Green AG Employers, Mrs. Luna, and all of the Aggrieved Employees were covered by the Wage Order because Mrs. Luna and all of the Aggrieved Employees worked for the Green AG Employers as non-exempt, hourly and piece rate employees including, but not limited to farm workers, fruit pickers, harvesters. Accordingly, Mrs. Luna and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 226.2, 510, 1194, 1197, and 1198)

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

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

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

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

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

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

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

(3) For employers of 25 or fewer employees:

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

...

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

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

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

Green AG Employers only paid Mrs. Luna and the other Aggrieved Employees for forty hours of work per week and failed to pay Mrs. Luna and the other Aggrieved Employees at least the minimum wage for any hours worked beyond forty hours. In 2019, on weeks where Mrs. Luna and the other Aggrieved Employees worked over 55 hours, the Green AG Employers failed to pay Mrs. Luna and the other Aggrieved Employees their overtime wages. In 2020, on weeks where Mrs. Luna and the other Aggrieved Employees worked over 50 hours, the Green AG Employers failed to pay Mrs. Luna and the other Aggrieved Employees their overtime wages. Furthermore, from January 1, 2021, through August 3, 2021, Green AG Employers failed to pay Mrs. Luna and the other aggrieved employees any overtime premiums or the correct overtime premiums for hours worked beyond eight-and-a-half in a day or 45 per week.

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

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent

violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);

2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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

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

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be

required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

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

As described above, the Green AG Employers required Mrs. Luna and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Green AG Employers required Mrs. Luna and all of the other Aggrieved Employees to supply tools, protective gear, and similar items to perform their job duties. However, the Green AG Employers did not provide these items and did not reimburse Mrs. Luna and the other Aggrieved Employees for these items. Mrs. Luna and the other aggrieved employees were required to use scissors and gloves to carry out their harvesting duties. The Green AG Employers failed to provide these necessary items and failed to reimburse Mrs. Luna and the other aggrieved employees for these expenses. Additionally, the Green AG Employers did not provide tools to Mrs. Luna and the other Aggrieved Employees it required them to use to perform their work, nor did they reimburse them for such tools, including gloves and similar items. Accordingly, Mrs. Luna seeks civil penalties for these Labor Code violations that the Green AG Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

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

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

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

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

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

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

At all relevant times during the applicable limitations period, the Green AG Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Green AG Employers failed to state in the wage statements they issued to Mrs. Luna and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular wages for work they performed beyond forty hours per week (as described above). The Green AG Employers knowingly and intentionally failed to state on the wage statements they issued to Mrs. Luna and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all hours work at each rate of pay, gross wages earned, net wages earned and similar information. Green AG Employers failed to state on the wage statements issued to Mrs. Luna and the other aggrieved employees the correct minimum wages earned, the correct regular wages earned, and the correct overtime wages earned. Accordingly, Mrs. Luna seeks civil penalties for the Labor Code violations that the Green AG Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each

aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

In relevant part, Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.
 - ...
 - (3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:
 - (i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.
 - (ii) The applicable minimum wage.

At all relevant times during the applicable limitations period, the Green AG Employers failed to separately compensate Mrs. Luna and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time, and related duties. The Green AG Employers required Mrs. Luna and the other Aggrieved Employees to attend training classes and travel to an administrative office to receive identification cards. Mrs. Luna and the other Aggrieved Employees were not compensated for this time. The Green AG Employers also paid Mrs. Luna and all of the other Aggrieved

Employees a piece rate that ranged between approximately \$0.25 to \$0.36 per unit of harvested grapes. The Green AG Employers' piece rate payments often fell below applicable hourly minimum wage rates and the corresponding overtime rate. The Green AG Employers often paid Mrs. Luna and all of the other Aggrieved Employees a rest and recovery rate that was below the average hourly rate or the applicable minimum wage.

Accordingly, Mrs. Luna seeks civil penalties on behalf of herself and all of the other Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, subdivisions (a)(1) and (a)(4) and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

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

The Green AG Employers failed to compensate Mrs. Luna and all of the other Aggrieved Employees for wages earned, including minimum wages and regular wages at the intervals stated above. As a result, the Green AG Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Mrs. Luna now seeks civil penalties for the Labor Code violations that the Green AG Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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

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

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

The Green AG Employers failed to pay Mrs. Luna and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Mrs. Luna, including minimum wages, regular wages, and similar forms of compensation. Additionally, the Green AG Employers failed to issue to Mrs. Luna and all of the other Aggrieved Employees whose employment ended their final paychecks. By failing to pay Mrs. Luna and all of the other Aggrieved Employees as set forth above at the end of employment, the Green AG Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Mrs. Luna seeks civil penalties from the Green AG Employers as follows:

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

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

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

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

Every person employing labor in this state shall:

...

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

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete

records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee, including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which, operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

...

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

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

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

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

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

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Maria Soledad Luna

Louis Benowitz, Esq.

///

Green AG, Inc.
c/o Attorney
Charles K. Manock
448 West Shaw Avenue
Fresno, CA 93704

EXHIBIT C



SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

March 24, 2022

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

Re: Andres Luna, Jr. / Green AG, Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Andres Luna, Jr. (hereafter “Luna, Jr.” or “Complainant”) provides notice that Green AG, Inc., and related entities (collectively “the Green AG Employers” or “the Employers”) violated his rights and those of all other individuals the Green AG Employers have employed or otherwise contracted with in California as non-exempt, hourly and piece rate employees including, but not limited to farm workers, fruit pickers, harvesters, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.2, 510, 1182.12, 1194, 1197, 1198, 2802, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Luna, Jr., hereby provides this notice to the Labor & Workforce Development Agency and the Green AG Employers and their agents and representatives.

At all relevant times, the Green AG Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Luna, Jr., and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 14-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

In or around 2019, the Green AG Employers began to employ Luna, Jr. in Bakersfield in the position of hourly and piece rate, non-exempt fruit picker. The Green AG Employers continuously employed him in that capacity until on or about August 3, 2021, when the employment relationship ended.

At all relevant times, the Green AG Employers issued wages to Luna, Jr. and all of the other Aggrieved Employees on a weekly basis and paid them by the hour. At all relevant times, the Green AG Employers classified Luna, Jr., and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order. Luna, Jr. is informed and believes that the Green AG Employers employed 25 or more employees.

The Green AG Employers failed to compensate Luna, Jr. and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Green AG Employers only paid Luna, Jr. and the other Aggrieved Employees for forty hours per week and failed to pay for any hours worked beyond those forty hours. The Green AG Employers failure to pay for these hours also extended to the relevant overtime hours for agricultural workers as defined by Wage Order 14. In 2019, for weeks when Luna, Jr. and the other Aggrieved Employees worked over 55 hours, the Green AG Employers failed to pay Luna, Jr. and the other Aggrieved Employees their overtime wages. In 2020, for weeks when Luna, Jr. and the other Aggrieved Employees worked over 50 hours, the Green AG Employers failed to pay Luna, Jr. and the other Aggrieved Employees their overtime wages. In 2021, for weeks when Luna, Jr. and the other Aggrieved Employees worked over 45 hours, the Green AG Employers failed to pay Luna, Jr. and the other Aggrieved Employees their overtime wages.

The Green AG Employers also paid Luna, Jr. and all of the other Aggrieved Employees a piece rate that ranged between approximately \$0.25 to \$0.36 per unit of harvested grapes. The Green AG Employers' piece rate payments often fell below applicable hourly minimum wage rates and the corresponding overtime rate. Thus, the Green AG Employers failed to compensate Luna, Jr. and the other Aggrieved Employees with at least the minimum wage for the days on which Luna, Jr. and the other Aggrieved Employees were paid a piece rate.

At all relevant times, the Green AG Employers required Luna, Jr. and all of the other Aggrieved Employees to incur certain business expenses in the course of performing

their duties. The Green AG Employers required Luna, Jr. and all of the other Aggrieved Employees to supply tools such as scissors, protective gear such as gloves, and comparable items to perform their job duties. However, the Green AG Employers did not provide these items and did not reimburse Luna, Jr. and the other Aggrieved Employees for these items. The Green AG Employers required Luna, Jr. and the other Aggrieved Employees to use scissors and gloves to carry out their harvesting duties. The Green AG Employers failed to provide these necessary items and failed to reimburse Luna, Jr. and the other Aggrieved Employees for these items.

At all relevant times, the Green AG Employers failed to issue to Luna, Jr. and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Green AG Employers knowingly and intentionally failed to state on the wage statements they issued to Luna, Jr. and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all hours work at each rate of pay, gross wages earned, and net wages earned. Green AG Employers failed to state on the wage statements issued to Luna, Jr. and the other aggrieved employees the correct number of hours worked, the correct minimum wages earned, the correct regular wages earned, and the correct overtime wages earned.

The Green AG Employers failed to provide Luna, Jr. and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross and net wages paid for those activities during the pay period.

The Green AG Employers also failed to timely pay Luna, Jr. and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment. The Green AG Employers failed to pay Luna, Jr. and the other Aggrieved Employees minimum wages, regular pay, or overtime wages for all hours worked. Furthermore, the Green AG Employers also failed to timely pay Luna, Jr. and the other Aggrieved employees their final wages upon the end of the employment relationship.

The Green AG Employers failed to maintain accurate employee records of Luna, Jr. and all of the other Aggrieved Employees.

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

- (a) The Green AG Employers failed to pay Luna, Jr. and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime;
- (b) The Green AG Employers failed to separately compensate Luna, Jr. and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time;
- (c) The Green AG Employers failed to indemnify Luna, Jr. and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (d) The Green AG Employers knowingly and intentionally failed to provide Luna, Jr. and all of the other Aggrieved Employees with accurate and complete wage statements;
- (e) The Green AG Employers willfully failed to timely pay Luna, Jr. and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Green AG Employers and when their employment ended; and
- (f) The Green AG Employers failed to maintain accurate employment records pertaining to Luna, Jr. and all of the other Aggrieved Employees.

Accordingly, Luna, Jr. now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Green AG Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

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

- (1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;
- (2) The sowing and planting of any agricultural or horticultural commodity;
- (3) The care of any agricultural or horticultural commodity,; as used in this subdivision, “care” includes, but is not limited to, cultivation, irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;
- (4) The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;
- (5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;
- (6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing, handling eggs, and extracting honey;
- (7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;
- (8) The conservation, improvement or maintenance of such farm and its tools and equipment.

Wage Order, § 2(D).

At all relevant times during the applicable limitations period, the Green AG Employers, Luna, Jr., and all of the Aggrieved Employees were covered by the Wage Order because Luna, Jr. and all of the Aggrieved Employees worked for the Green AG Employers as non-exempt, hourly and piece rate employees including, but not limited to farm workers, fruit pickers, harvesters, and similar occupations. Accordingly, Luna, Jr. and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 226.2, 510, 1194, 1197, and 1198)

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

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

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

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

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

- (c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.
 - (d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.
- (3) For employers of 25 or fewer employees:
- (a) Starting January 1, 2022, the overtime standards and compensation in subsection (2)(a) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.
 - (b) Starting January 1, 2023, the overtime standards and compensation in subsection (2)(b) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.
 - (c) Starting January 1, 2024, the overtime standards and compensation in subsection (2)(c) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.
 - (d) Starting January 1, 2025, the overtime standards and compensation in subsection (2)(d) above, shall apply to any employee who works over the specified numbers of hours in any one workday or workweek.

...

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

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

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

Green AG Employers only paid Luna, Jr. and the other Aggrieved Employees for forty hours of work per week and failed to pay Luna, Jr. and the other Aggrieved Employees at least the minimum wage for any hours worked beyond forty hours. In 2019, on weeks where Luna, Jr. and the other Aggrieved Employees worked over 55 hours, the Green AG Employers failed to pay Luna, Jr. and the other Aggrieved Employees their overtime wages. In 2020, on weeks where Luna, Jr. and the other Aggrieved Employees worked over 50 hours, the Green AG Employers failed to pay Luna, Jr. and the other Aggrieved Employees their overtime wages. Furthermore, from January 1, 2021, through August 3, 2021, Green AG Employers failed to pay Luna, Jr. and the other aggrieved employees any overtime premiums or the correct overtime premiums for hours worked beyond eight-and-a-half in a day or 45 per week.

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

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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

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

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages

are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

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

As described above, the Green AG Employers required Luna, Jr. and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Green AG Employers required Luna, Jr. and all of the other Aggrieved Employees to supply tools, protective gear, and similar items to perform their job duties. However, the Green AG Employers did not provide these items and did not reimburse Luna, Jr. and the other Aggrieved Employees for these items. Luna, Jr. and the other aggrieved employees were required to use scissors and gloves to carry out their harvesting duties. The Green AG Employers failed to provide these necessary items and failed to reimburse Luna, Jr. and the other aggrieved employees for these expenses. Additionally, the Green AG Employers did not provide tools to Luna, Jr. and the other Aggrieved Employees it required them to use to perform their work, nor did they reimburse them for such tools, including gloves and similar items. Accordingly, Luna, Jr. seeks civil penalties for these Labor Code violations that the Green AG Employers have committed against him and all of the other Aggrieved Employees as follows:

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

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

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

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

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

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

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

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

At all relevant times during the applicable limitations period, the Green AG Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Green AG Employers failed to state in the wage statements they issued to Luna, Jr. and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular wages for work they performed beyond forty hours per week (as described above). The Green AG Employers knowingly and intentionally failed to state on the wage statements they issued to Luna, Jr. and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all hours work at each rate of pay, gross wages earned, net wages earned and similar information. Green AG Employers failed to state on the wage statements issued to Luna, Jr. and the other aggrieved employees the correct minimum wages earned, the correct regular wages earned, and the correct overtime wages earned. Accordingly, Luna, Jr. seeks civil penalties for the Labor Code violations that the Green AG Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000

for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

In relevant part, Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.
 - ...
 - (3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:
 - (i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.
 - (ii) The applicable minimum wage.

At all relevant times during the applicable limitations period, the Green AG Employers failed to separately compensate Luna, Jr. and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time, and related duties. The Green AG Employers required Luna, Jr. and the other Aggrieved Employees to attend training classes and travel to an administrative office to receive identification cards. Luna, Jr. and the other Aggrieved Employees were not compensated for this time. The Green AG Employers also paid Luna, Jr. and all of the other Aggrieved Employees a piece

rate that ranged between approximately \$0.25 to \$0.36 per unit of harvested grapes. The Green AG Employers' piece rate payments often fell below applicable hourly minimum wage rates and the corresponding overtime rate. The Green AG Employers often paid Luna, Jr. and all of the other Aggrieved Employees a rest and recovery rate that was below the average hourly rate or the applicable minimum wage.

Accordingly, Luna, Jr. seeks civil penalties on behalf of himself and all of the other Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, subdivisions (a)(1) and (a)(4) and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

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

The Green AG Employers failed to compensate Luna, Jr. and all of the other Aggrieved Employees for wages earned, including minimum wages and regular wages at the intervals stated above. As a result, the Green AG Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Luna, Jr. now seeks civil penalties for the Labor Code violations that the Green AG Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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

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

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

The Green AG Employers failed to pay Luna, Jr. and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Luna, Jr., including minimum wages, regular wages, and similar forms of compensation. Additionally, the Green AG Employers failed to issue to Luna, Jr. and all of the other Aggrieved Employees whose employment ended their final paychecks. By failing to pay Luna, Jr. and all of the other Aggrieved Employees as set forth above at the end of employment, the Green AG Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Luna, Jr. seeks civil penalties from the Green AG Employers as follows:

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

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

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

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

Every person employing labor in this state shall:

...

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

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete

records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee, including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which, operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

...

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

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

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

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

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

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Andres Luna, Jr.

Louis Benowitz, Esq.

///

Green AG, Inc.
c/o Attorney
Charles K. Manock
448 West Shaw Avenue
Fresno, CA 93704

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 8605 Santa Monica Blvd., PMB 42554, West Hollywood, CA 90069.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On August 31, 2022, I served the foregoing document described as **[PROPOSED] FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

Charles Manock, Esq.
Katie Phaphon
Manock Law
448 W Shaw Ave
Fresno, CA 93704-2511
cmanock@manocklaw.com
kp.manocklaw@gmail.com

XXXX (BY EMAIL) Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address stacy.aguirre@spivaklaw.com.

EXECUTED on August 31, 2022, at Santa Barbara, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Stacy Aguirre



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