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18 ANDRES LUNA, SR., and all others similarly situated

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

ANDRES LUNA, SR., on behalf of himself 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,

Plaintiff,

vs.

GREEN AG, INC., a California corporation, and
DOES 1–50, inclusive,

Defendants.

ELECTRONICALLY FILED

3/17/2022 10:55 AM

Kern County Superior Court

By Alejandra Velazquez, Deputy

Case No. BCV-22-100618

CLASS ACTION

COMPLAINT FOR:

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. (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

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

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

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

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

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

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

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

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

21 **II. THE PARTIES**

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

25 4. Defendant Green AG, Inc. is organized and existing under the laws of California
26 and also a citizen of California based on Plaintiff’s information and belief.

27 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
28 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
is informed and believes and thereon alleges that said Defendants are legally responsible for the
wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants



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when ascertained.

6. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act within the course and scope of such agency, employment, direction and control, and with the approval and ratification of each of the other Defendants.

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

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

III. CLASS ALLEGATIONS

9. This action has been brought and may be maintained as a class action pursuant to 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 Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

10. **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”).

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

12. **Numerosity:** The Class Members are so numerous that the individual joinder of



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each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

13. **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.

14. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.

15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

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



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17. **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

18. 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, disking, 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;



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(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, Plaintiff and all of the other Class Members were covered by the Wage Order because the Defendants operated, and Plaintiff, and all of the other Class Members worked for, one or more farm establishments. Accordingly, Plaintiff and all of the other Class Members are entitled to the protections the Wage Order provides.

19. In or around 2019, the Defendants began to employ Plaintiff in Bakersfield in the position of hourly and piece rate, non-exempt fruit picker. The Defendants continuously employed him in that capacity until on or about August 3, 2021, when his employment ended.

20. At all relevant times, the Defendants issued wages to Plaintiff 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 Plaintiff and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

21. At all relevant times, the Defendants failed to compensate Plaintiff and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. Defendants only paid Plaintiff 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 also extended to the relevant overtime hours for agricultural workers as defined by Wage Order 14. In 2019, for weeks where Plaintiff and the other Class Members worked over 55 hours, Defendants failed to pay Plaintiff and the other Class Members their overtime wages. In 2020, for weeks where Plaintiff and the other Class Members worked over 50 hours, Defendants failed to pay Plaintiff and the other Class Members their overtime wages. In 2021, for weeks where Plaintiff and the other Class Members worked over 45 hours, Defendants failed to pay Plaintiff and the other Class Members their overtime wages.

22. At all relevant times, the Defendants required Plaintiff and all of the other Class Members to incur certain business expenses in the course of performing their duties. The Defendants required Plaintiff and all of the other Class Members to supply tools such as scissors,



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1 protective gear such as gloves, and comparable items to perform their job duties. However, the
2 Defendants did not provide these necessary items and did not reimburse Plaintiff and the other
3 Class Members for these expenses.

4 23. At all relevant times, the Defendants failed to issue to Plaintiff and all of the other
5 Class Members complete and accurate wage statements that state all hours worked at the correct
6 rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the
7 wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
8 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
9 earned, all overtime wages earned, all hours work at each rate of pay, gross wages earned, net
10 wages earned, and related information. Defendants failed to state on the wage statements issued
11 to Plaintiff and the other Class Members the correct number of hours worked, the correct
12 minimum wages earned, the correct regular wages earned, and the correct overtime wages earned.

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

20 25. At all relevant times, the Defendants also failed to timely pay Plaintiff and all of
21 the other Class Members all earned wages as described above during and at the conclusion of
22 employment. Defendants failed to pay Plaintiff and the other Class Members minimum wages,
23 regular pay, or overtime wages and rest and recovery wages for all hours worked. Defendants also
24 failed to timely pay Plaintiff and the other Class Members their final wages upon the end of the
25 employment relationship.

26 26. At all relevant times, the Defendants failed to maintain accurate employee records
27 of Plaintiff and all of the other Class Members.

28 27. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practices and policies, Plaintiff and the Class Members were:

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



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- 1 b. Not indemnified for all necessary business expenditures incurred during
2 the discharge of their duties;
3 c. Not provided with accurate and complete wage statements; and
4 d. Not timely paid all earned and unpaid wages at the time their employment
5 ended.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE**
8 **CORRECT RATES OF PAY**

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

10 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

11 28. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

12 29. At all relevant times, Plaintiff and the Class Members have been non-exempt
13 employees entitled to the protections of both the Labor Code and the Wage Order.

14 30. Section 2 of the Wage Order defines “hours worked” as “the time during which an
15 employee is subject to the control of an employer, and includes all the time the employee is
16 suffered or permitted to work, whether or not required to do so.”

17 31. Section 3 of the Wage Order states:

18 (A) The following overtime provisions are applicable to employees eighteen
19 (18) years of age or over and to employees sixteen (16) or seventeen (17)
20 years of age who are not required by law to attend school:

21 (1) Such employees shall not be employed more than ten (10) hours in
22 any one workday or more than six (6) days in any workweek unless
23 the employee receives one and one-half (1 1/2) times such
24 employee’s regular rate of pay for all hours worked over ten (10)
25 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



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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.



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(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.

32. 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.

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

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

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

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

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

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1 38. In relevant part, Labor Code section 226.2 states

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

4 (1) Employees shall be compensated for rest and recovery
5 periods and other nonproductive time separate from any
6 piece-rate compensation.

7 ...

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

11 (i) An average hourly rate determined by
12 dividing the total compensation for the
13 workweek, exclusive of compensation for
14 rest and recovery periods and any premium
15 compensation for overtime, by the total
16 hours worked during the workweek,
17 exclusive of rest and recovery periods.

18 (ii) The applicable minimum wage.

19 39. In conjunction, these provisions of the Labor Code require employers to pay non-
20 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
21 worked, including unrecorded hours when the employer knew or reasonably should have known
22 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
23 Cal.4th 575, 585.)

24 40. At all relevant times during the applicable limitations period, Defendants failed to
25 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
26 minimum, regular, overtime and doubletime wages for all minimum, regular, and overtime hours,
27 respectively, that they worked at the correct rates of pay.

28 41. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
rates of pay as required by California law.

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SECOND CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code § 2802

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

42. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

43. In pertinent part, California 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.”

44. 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).

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

46. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties.

47. As described above, the Defendants required Plaintiff and all of the other Class Members to incur certain business expenses in the course of performing their duties. The Defendants required Plaintiff and all of the other Class members to supply tools such as scissors, protective gear such as gloves, and comparable items to perform their job duties. However, the Defendants did not provide these items and did not reimburse Plaintiff and the other Class members for these items.

48. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’



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1 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
2 during the course of performing their duties.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

5 **Lab. Code §§ 226 and 226.2**

6 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

7 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
8 **STATEMENTS**

9 49. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

10 50. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
11 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
12 statement showing:

- 13 1. Gross wages earned;
- 14 2. Total hours worked by the employee, except for any employee
15 whose compensation is solely based on a salary and who is exempt
16 from payment of overtime under subdivision (a) of Section 515 or
17 any applicable order of the Industrial Welfare Commission;
- 18 3. The number of piece rate units earned and any applicable piece rate
19 if the employee is paid on a piece-rate basis;
- 20 4. All deductions, provided that all deductions made on written
21 orders of the Employee may be aggregated and shown as one item;
- 22 5. Net wages earned;
- 23 6. The inclusive dates of the period for which the employee is paid;
- 24 7. The name of the employee and his or her social security number,
25 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;
- 26 8. The name and address of the legal entity that is the employer and,
27 if the employer is a farm labor contractor, as defined in subdivision
28 (b) of Section 1682, the name and address of the legal entity that
secured the services of the employer; and



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1 9. All applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the
3 employee.

4 Lab.Code § 266(a).

5 51. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
6 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
7 the employer fails to provide accurate and complete information as required by California Labor
8 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
9 alone one or more of the following:

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

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

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

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

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

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

24 53. As alleged herein, at all relevant times during the applicable limitations period,
25 Defendants violated California Labor Code section 226 because they did not properly and
26 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
27 the corresponding number of hours worked at each rate by the employee and other requirements
28 of California Labor Code section 226. Defendants failed to state in the wage statements they
issued to Plaintiff and the other Class Members all their hours worked and wages earned,
including, but not limited to, regular and overtime wages for work they performed off-the-clock
after clocking-out (as described above). Defendants knowingly and intentionally did not issue



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1 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
2 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
3 Members that state all minimum wages earned, all regular wages earned, all overtime wages
4 earned, all hours worked at each rate of pay, gross wages earned, and net wages earned.
5 Defendants failed to state on the wage statements issued to Plaintiff and the other Class Members
6 the correct number of hours worked, the correct minimum wages earned, the correct regular wages
earned, and the correct overtime wages earned.

7 54. Defendants' failure to provide Plaintiff and the other Class Members with accurate
8 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
9 the other Class Members with accurate wage statements but intentionally provided wage
10 statements that Defendants knew were not accurate.

11 55. Similarly, section 7(C) of the Wage Order states:

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

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

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

22 56. As a result of being provided with inaccurate and incomplete wage statements by
23 Defendants, Plaintiff and the other Class Members have suffered injury. Their legal rights to
24 receive accurate wage statements were violated and they were misled about the amount of wages
25 they had actually earned and were owed. In addition, the absence of accurate information on their
26 wage statements prevented immediate challenges to Defendants' unlawful pay practices, has
27 required discovery and mathematical computations to determine the amounts of wages owed, has
28 caused difficulty and expense in attempting to reconstruct time and pay records, and/or has led to



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1 the submission of inaccurate information about wages to state and federal government agencies.
2 Further, Plaintiff and the other Class Members were not able to ascertain from the wage
3 statements whether Defendants complied with their obligations under California Labor Code
4 section 226(a).

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

7 57. Labor Code section 226.2 states

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

10 ...

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

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

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

22 **FOURTH CAUSE OF ACTION**

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

24 **Lab. Code §§ 201, 202, and 203**

25 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

26 59. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

27 60. At all relevant times during the applicable limitations period, Plaintiff and the
28 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
of California Labor Code §§ 201, 202, and 203, and the Wage Order.

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

62. Labor Code § 202 provides that all earned and unpaid wages of an employee who



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quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

63. The Defendants failed to pay Plaintiff and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Plaintiff, including minimum wages, regular wages, overtime wages, and rest and recovery wages. Additionally, the Defendants failed to issue to Plaintiff and all of the other Class members whose employment ended their final paychecks. Plaintiff did not receive any compensation for the hours he worked on his last day employed with Defendants.

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

65. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Class Members all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and 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.

66. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

Bus. & Prof. Code §§ 17200, *et seq.*

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

67. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

68. At all relevant times during the applicable limitations period, Plaintiff 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.*

69. 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



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1 gained a competitive advantage over other comparable companies doing business in California
2 that comply with their legal obligations to compensate employees for all earned wages.

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

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

12 72. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
13 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
14 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

15 **SIXTH CAUSE OF ACTION**

16 **CIVIL PENALTIES**

17 **Lab.Code §§ 2698, et seq.**

18 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

19 73. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20 74. The "Aggrieved Employees" are all members of the Class defined above who
21 Defendants employed during the period beginning May 30, 2020, and ending on the date that final
22 judgment is entered in this action.

23 75. Labor Code § 204 states

24 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
25 or 204.2, earned by any person in any employment are due and payable twice
26 during each calendar month, on days designated in advance by the employer as the
27 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
28 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



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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.

76. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the aggrieved employees on such intervals for all wages earned and all hours worked.

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

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

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

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

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each aggrieved employee for initial violation and one thousand dollars (\$1,000.00)



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1 for each aggrieved employee for each subsequent violation (penalty amounts established by
2 California Labor Code § 226.3).

3 C. For violations of California Labor Code § 1197, one hundred dollars
4 (\$100.00) for each aggrieved employee for each initial and intentional violation and two hundred
5 fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation, per pay period
6 (regardless of whether the initial violations were intentionally committed), in addition to an
7 amount sufficient to recover unpaid wages (penalty amounts established by California Labor
8 Code § 1197.1).

9 D. For violations of California Labor Code §§ 201, 202, 203, 226.2, 510,
10 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period
11 for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
12 period for each subsequent violation (penalty amounts established by California Labor Code §
13 2699(f)(2)).

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

24 81. Pursuant to California Labor Code § 2699(g), Plaintiff and the aggrieved
25 employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
26 connection with their claims for civil penalties.

27 **V. PRAYER FOR RELIEF**

28 82. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action with respect to
Plaintiff’s claims for violations of California law;



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- 1 B. An order that Plaintiff be appointed class representative;
2 C. An order that counsel for Plaintiff be appointed class counsel;
3 D. Unpaid wages, including minimum, regular, overtime, double-time,
4 nonproductive time, and rest and recovery time;
5 E. Liquidated damages;
6 F. Statutory penalties, including waiting time penalties;
7 G. Restitution;
8 H. Declaratory relief;
9 I. Actual damages;
10 J. Civil Penalties;
11 K. Pre-judgment interest;
12 L. Costs of suit;
13 M. Reasonable attorneys' fees; and
14 N. Such other relief as the Court deems just and proper.

15 **VI. DEMAND FOR JURY TRIAL**

16 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
17 on all issues so triable.

18 Respectfully submitted,

THE SPIVAK LAW FIRM

19 Dated: March 17, 2022

By:



DAVID G. SPIVAK
SARA BROWN
Attorneys for Plaintiff, ANDRES
LUNA, SR., and all others similarly
situated



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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.

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cc: Andres Luna, Sr
Louis Benowitz, Esq.

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