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17 Attorneys for Plaintiff,
18 GENARO REYES VILLAGRA, and all others similarly situated

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF SANTA BARBARA**
21 **(UNLIMITED JURISDICTION)**

22 GENARO REYES VILLAGRA, as an
23 “aggrieved employee” on behalf of
24 himself and other similarly situated
25 “aggrieved employees” under the Labor
26 Code Private Attorneys General Act of
27 2004,

28 *Plaintiff,*

vs.

INNOVATIVE PRODUCE, INC., a
California corporation; and DOES 1–50,
inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
7/18/2022 10:36 AM
By: Terri Chavez, Deputy

Case No. 22CV02747

**COMPLAINT FOR VIOLATIONS
OF THE LABOR CODE AND
CIVIL PENALTIES UNDER THE
LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF
2004, LABOR CODE §§ 2698, ET
SEQ.**

JURY TRIAL DEMANDED



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1 Plaintiff, Genaro Reyes Villagra (hereafter “Plaintiff” or “Reyes Villagra”),
2 on behalf of himself, the State of California, and the other Aggrieved Employees,
3 complains and alleges as follows:
4

5 **I. INTRODUCTION**

6 1. Plaintiff brings this representative action based on alleged violations
7 of the California Labor Code and Industrial Welfare Commission Order No. 14-
8 2001 (hereafter “the Wage Order”), against Defendants Innovative Produce, Inc., a
9 California corporation, and DOES 1-50, inclusive (collectively “Defendants”).

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are
11 liable to him, the State of California, and the Aggrieved Employees (defined below),
12 for civil penalties and other related relief. These claims are based on Defendants’
13 failures to:

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

16 (B) Only deduct wages lawfully;

17 (C) Issue only accurate and complete itemized wage statements;

18 (D) Timely pay wages during employment;

19 (E) Timely pay wages upon termination of employment; and

20 (F) Maintain accurate employment records.

21 Accordingly, Plaintiff now seeks to recover civil penalties and related relief through
22 this representative action.
23

24 **II. THE PARTIES**

25 3. Plaintiff Genaro Reyes Villagra is resident of California.

26 4. Defendant Innovative Produce, Inc. is a corporation organized and
27 existing under the laws of California and also a citizen of California based on
28 Plaintiff’s information and belief.



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

8 6. The “Aggrieved Employees” are all individuals the Defendants have
9 employed or otherwise contracted with in California as hourly, non-exempt
10 employees, including but not limited to farm workers, produce pickers, harvesters,
11 individuals performing work comparable to the aforementioned, and individuals in
12 similar positions during the period beginning one year before the Plaintiff’s notice
13 of April 20, 2022 to the California Labor and Workforce Development Agency and
14 ending on the date judgment is entered.

15 7. Plaintiff is informed and believes and thereon alleges that, at all
16 relevant times herein, all Defendants were the agents, employees and/or servants,
17 masters or employers of the remaining defendants, and in doing the things
18 hereinafter alleged, were acting within the course and scope of such agency or
19 employment, and with the approval and ratification of each of the other Defendants.

20 8. At all relevant times, in perpetrating the acts and omissions alleged
21 herein, Defendants, and each of them, acted pursuant to and in furtherance of a
22 policy, practice, or a lack of a practice which resulted in Defendants not paying
23 Plaintiff and the other Aggrieved Employees in accordance with applicable
24 California labor laws as alleged herein.

25 9. Plaintiff is informed and believes and thereon alleges that each and
26 every one of the acts and omissions alleged herein were performed by, and/or
27 attributable to, all Defendants, each acting as agents and/or employees, and/or under
28



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1 the direction and control of each of the other defendants, and that said acts and
2 failures to act were within the course and scope of said agency, employment, and/or
3 direction and control.

4 III. FACTUAL ALLEGATIONS

5 10. IWC Wage Order 14-2001 (“the Wage Order”) applies to “all persons
6 employed in an agricultural occupation whether paid on a time, piece rate,
7 commission, or other basis” Wage Order, § 1. The Wage Order defines “employed
8 in an agricultural occupation” to mean

- 9
10 (1) The preparation, care, and treatment of farm land, pipeline, or
11 ditches, including leveling for agricultural purposes, plowing,
12 discing, and fertilizing the soil;
- 13 (2) The sowing and planting of any agricultural or horticultural
14 commodity;
- 15 (3) The care of any agricultural or horticultural commodity,; as
16 used in this subdivision, “care” includes, but is not limited to,
17 cultivation, irrigation, weed control, thinning, heating, pruning,
18 or tying, fumigating, spraying, and dusting;
- 19 (4) The harvesting of any agricultural or horticultural commodity,
20 including but not limited to, picking, cutting, threshing,
21 mowing, knocking off, field chopping, bunching, baling,
22 balling, field packing, and placing in field containers or in the
23 vehicle in which the commodity will be hauled, and
24 transportation on the farm or to a place of first processing or
25 distribution;
- 26 (5) The assembly and storage of any agricultural or horticultural
27 commodity, including but not limited to, loading, road siding,
28 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,



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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 Innovative Produce “Employers, Reyes Villagra, and all of the Aggrieved Employees were covered by the Wage Order because the Innovative Produce Employers operated, and Reyes Villagra, and all of the Aggrieved Employees worked for, one or more establishments operated as agricultural businesses. Accordingly, Reyes Villagra and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

11. On approximately 2016, the Defendants began to employ Reyes Villagra in Santa Maria in the position of hourly, non-exempt farm worker. The Defendants continuously employed him in that capacity until on or about August 9, 2021 when his employment ended.

12. At all relevant times, the Defendants issued wages to Reyes Villagra and all of the other Aggrieved Employees on a basis and paid them by the hour. At all relevant times, the Defendants classified Reyes Villagra and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

13. At all relevant times, the Defendants failed to compensate Reyes Villagra and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. Reyes Villagra and the other Aggrieved Employees usually worked from 6:00 a.m. to 5:30 p.m. Monday through Friday. However, the Innovative Produce Employers usually only credited Reyes Villagra



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1 and the other Aggrieved Employees with nine hours of work per day to avoid paying
2 all regular and minimum wages earned.

3 14. At all relevant times, the Defendants failed to compensate Reyes
4 Villagra and all of the other Aggrieved Employees at the correct rates of pay for all
5 hours worked over eight in a day, over 40 in a week, and for the first eight hours of
6 the seventh day of the workweek. Reyes Villagra and the other Aggrieved
7 Employees usually worked from 6:00 a.m. to 5:30 p.m. Monday through Friday.
8 However, the Innovative Produce Employers usually only credited Reyes Villagra
9 and the other Aggrieved Employees with nine hours of work per day to avoid paying
10 all overtime wages earned. Additionally, Reyes Villagra and the other Aggrieved
11 Employees non-discretionary bonuses during pay periods in which they worked
12 hours qualifying for overtime and/or double time premium pay rates. However, the
13 Innovative Produce Employers failed to pay Villagra and all of the other Aggrieved
14 Employees overtime premium wages on such bonus compensation.

15 15. At all relevant times, the Defendants failed to compensate Reyes
16 Villagra and all of the other Aggrieved Employees at the correct rates of pay for all
17 hours worked over 12 in a day, and all over the first eight of the seventh day of the
18 workweek.

19 16. At all relevant times, the Defendants failed to provide Reyes Villagra
20 and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal
21 periods. The Defendants also failed to pay premium wages for days on which it
22 failed to provide Reyes Villagra and all of the other Aggrieved Employees with
23 meal periods as required by law.

24 17. At all relevant times, the Defendants failed to authorize and permit
25 Reyes Villagra and all of the other Aggrieved Employees to take ten-minute, off-
26 duty, paid rest breaks every four hours worked or major portion thereof. The
27 Defendants also failed to pay premium wages for days on which it failed to
28



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1 authorize and permit Reyes Villagra and all of the other Aggrieved Employees to
2 take rest breaks as required by law.

3 18. At all relevant times, the Defendants unlawfully deducted wages
4 belonging to Reyes Villagra and all of the other Aggrieved Employees. The
5 Innovative Produce Employers deducted hours worked from the total daily hours
6 worked by Reyes Villagra and the other Aggrieved Employees.

7 19. At all relevant times, the Defendants failed to issue to Reyes Villagra
8 and all of the other Aggrieved Employees complete and accurate wage statements
9 that state all hours worked at the correct rates of pay, and all wages earned. The
10 Defendants knowingly and intentionally failed to state on the wage statements they
11 issued to Reyes Villagra and all of the other Aggrieved Employees the unpaid wages
12 discussed above. The wage statements fail to state all overtime wages earned, all
13 doubletime wages earned, all minimum wages earned, all regular wages earned, all
14 unlawfully deducted wages, all earned wages subject to discount, address of
15 employer, the employer's name and address, and related information. Instead of
16 listing the legal address of the Innovative Produce Employers, the Innovative
17 Produce Employers only listed a post office box on the wage statements they issued
18 to Reyes Villagra and the other Aggrieved Employees.

19 20. At all relevant times, the Defendants also failed to timely pay Reyes
20 Villagra and all of the other Aggrieved Employees all earned wages as described
21 above during and at the conclusion of employment.

22 21. At all relevant times, the Defendants failed to maintain accurate
23 employee records of Reyes Villagra and all of the other Aggrieved Employees.
24 Defendant did not maintain records of the start and stop times of the work Reyes
25 Villagra and the other Aggrieved Employees worked, instead maintaining only
26 incomplete reports of the total hours worked per day.

27 ///
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1 22. For the reasons stated herein, Plaintiff alleges that as a result of
2 Defendants' unlawful practice and policies, Plaintiff and the Aggrieved Employees
3 were:

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

7 B. Not provided with all off duty meal periods;

8 C. Not authorized and permitted to take all rest break periods;

9 D. Not paid one hour's pay for each workday in which Defendants
10 failed to authorize and permit them to take one or more timely rest periods;

11 E. Not paid one hour's pay for each workday in which Defendants
12 failed to provide them with one or more timely meal periods;

13 F. Not indemnified for all necessary business expenditures
14 incurred during the discharge of their duties;

15 G. Not provided with accurate and complete wage statements; and

16 H. Not timely paid all earned and unpaid wages during their
17 employment with Defendants and at the time such employment ended.
18

19 **IV. FIRST (AND ONLY) CAUSE OF ACTION**

20 **CIVIL PENALTIES**

21 **(Lab. Code §§ 2698, *et seq.*)**

22 **(By Plaintiff, on behalf of himself and the other Aggrieved Employees,**
23 **against all Defendants)**

24 23. Plaintiff incorporates all paragraphs of this Complaint as if fully
25 alleged herein.

26 24. At all relevant times, Plaintiff and the Aggrieved Employees have been
27 non-exempt employees entitled to the protections of both the Labor Code and the
28 Wage Order.



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1 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS**
2 **WORKED AT THE CORRECT RATES OF PAY**

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

7 26. Section 3 of the Wage Order states:

8
9 (A) The following overtime provisions are applicable to employees
10 eighteen (18) years of age or over and to employees sixteen (16)
11 or seventeen (17) years of age who are not required by law to
attend school:

12 (1) Such employees shall not be employed more than ten
13 (10) hours in any one workday or more than six (6) days
14 in any workweek unless the employee receives one and
15 one-half (1 1/2) times such employee’s regular rate of
16 pay for all hours worked over ten (10) hours in any
17 workday and for the first eight (8) hours on the seventh
18 (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.

19 (2) For employers of more than 25 employees:

20
21 (a) Starting January 1, 2019, an employee shall not be
22 employed more than nine and one-half (9 1/2)
23 hours per workday or fifty-five (55) hours per
24 workweek unless the employee receives one and
25 one-half (1 1/2) times such employee’s regular rate
26 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.

27 (b) Starting January 1, 2020, an employee shall not be
28 employed more than nine (9) hours per workday or



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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.



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1 (c) Starting January 1, 2024, the overtime standards
2 and compensation in subsection (2)(c) above, shall
3 apply to any employee who works over the
4 specified threshold hours in any one workday or
workweek.

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

9 ...

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

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

19 28. Labor Code section 510 states:

20
21 Eight hours of labor constitutes a day's work. Any work in excess of
22 eight hours in one workday and any work in excess of 40 hours in any
23 one workweek and the first eight hours worked on the seventh day of
24 work in any one workweek shall be compensated at the rate of no less
25 than one and one-half times the regular rate of pay for an employee.
26 Any work in excess of 12 hours in one day shall be compensated at the
27 rate of no less than twice the regular rate of pay for an employee. In
28 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



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order to calculate the amount to be paid to an employee for any hour of overtime work.

29. 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.

30. 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.

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

32. 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 Cal.4th 575, 585.)

33. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay.

34. 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 Aggrieved Employees for all hours worked as required by California law.

B. UNLAWFUL DEDUCTIONS

35. Under Labor Code § 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said



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1 employer to said employee.” The Defendants deducted wages from the wages
2 earned by Reyes Villagra and all of the other Aggrieved Employees for in violation
3 of Labor Code § 221. Accordingly, Reyes Villagra seeks an award of civil penalties
4 against the Defendants on behalf of himself and all of the other Aggrieved
5 Employees as follows: \$100 for each aggrieved employee for each initial violation
6 of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent
7 violation, or any willful or intentional violation of Labor Code § 221, plus 25% of
8 the amount unlawfully withheld from each aggrieved employee (penalties set by
9 Labor Code § 225.5).

10 **C. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN**
11 **WAGE STATEMENTS**

12 36. Pursuant to California Labor Code § 226(a), Plaintiff and the
13 Aggrieved Employees were entitled to receive, bi-weekly or at the time of each
14 payment of wages, an accurate itemized statement showing:
15

- 16 1. Gross wages earned;
- 17 2. Total hours worked by the employee, except for any
18 employee whose compensation is solely based on a
19 salary and who is exempt from payment of overtime
20 under subdivision (a) of Section 515 or any applicable
21 order of the Industrial Welfare Commission;
- 22 3. The number of piece rate units earned and any applicable
23 piece rate if the employee is paid on a piece-rate basis;
- 24 4. All deductions, provided that all deductions made on
25 written orders of the Employee may be aggregated and
26 shown as one item;
- 27 5. Net wages earned;
- 28 6. The inclusive dates of the period for which the employee



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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.

Lab.Code § 266(a).

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

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

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

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California



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1 Labor Code, the name and address of the legal entity that secured the services of
2 the employer during the pay period;

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

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

7 38. "Promptly and easily determine," as stated in California Labor Code
8 § 226(e), means a reasonable person would be able to readily ascertain the
9 information without reference to other documents or information.

10 39. As alleged herein, at all relevant times during the applicable limitations
11 period, Defendants violated California Labor Code section 226 because they did not
12 properly and accurately itemize each employee's gross wages earned, net wages
13 earned, the total hours worked, the corresponding number of hours worked at each
14 rate by the employee and other requirements of California Labor Code section 226.
15 Defendants failed to state in the wage statements they issued to Plaintiff and the
16 other Aggrieved Employees all their hours worked and wages earned, including,
17 but not limited to, regular and overtime wages for work they performed off-the-
18 clock after clocking-out (as described above).

19 40. Defendants' failure to provide Plaintiff and the other Aggrieved
20 Employees with accurate wage statements was knowing and intentional.
21 Defendants had the ability to provide Plaintiff and the other Aggrieved Employees
22 with accurate wage statements but intentionally provided wage statements that
23 Defendants knew were not accurate.

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

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



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- (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.

42. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Aggrieved Employees 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, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a) and the Wage Order.

D. UNTIMELY WAGES DURING EMPLOYMENT

43. Labor Code § 204 states:

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- (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.

44. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages on workdays they failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

E. UNTIMELY FINAL WAGES

45. 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.

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

47. By failing to pay earned minimum and premium wages to Plaintiff and the Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

48. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have



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1 deliberately maintained policies and practices that violate the requirements of the
2 Labor Code and the Wage Order, even though at all relevant times, they have had
3 the ability to comply with those legal requirements.

4 **F. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

5 49. Labor Code § 1174 states:

6
7 Every person employing labor in this state shall:

8 ...

9
10 (c) Keep a record showing the names and addresses of all
11 employees employed and the ages of all minors.

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

24 50. Labor Code § 1174.5 states:

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

51. Section 7 of the Wage Order states:

///



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(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.

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

///

1 53. On information and belief, Defendants have willfully failed to
2 maintain the records required by § 1174 and Wage Order, including, but not limited
3 to, the total premium wages earned for missed meal and rest periods, and records
4 pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

5 54. Accordingly, Reyes Villagra seeks an award of civil penalties against
6 the Defendants on behalf of himself and all of the other Aggrieved Employees as
7 follows: (1) \$500 for each aggrieved employee for each violation of Labor Code
8 section 1174 (penalties set by Labor Code section 1174.5); and (2) \$100 for each
9 aggrieved employee for each initial violation of Labor Code section 1198, and \$200
10 for each Aggrieved Employee for each subsequent violation, per pay period
11 (penalties set by Labor Code section 2699(f)(2)).

12 **G. CIVIL PENALTIES SOUGHT**

13 55. Defendants paid wages to employees on regular intervals. Defendants
14 failed to pay Plaintiff on such intervals for all wages earned and all hours worked.
15 On information and belief, Plaintiff alleges that Defendants also failed to pay the
16 Aggrieved Employees on such intervals for all wages earned and all hours worked.

17 56. During the applicable time period, Defendants violated California
18 Labor Code §§ 201, 202, 203, 204, 221, 226, 510, 1174, 1194, 1197, 1198, and
19 related Labor Code statutes.
20

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

25 58. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
26 Aggrieved Employees are entitled to recover civil penalties for each of the
27 Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226,
28 510, 1174, 1194, 1197, 1198, and related Labor Code statutes during the applicable



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1 limitations period in the following amounts:

2 A. For violations of California Labor Code § 204, one hundred
3 dollars (\$100.00) for each aggrieved employee for each initial violation and two
4 hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful
5 or intentional violation (penalty amounts established by California Labor Code
6 § 210).

7 B. For violations of California Labor Code § 221, one hundred
8 dollars (\$100.00) for each aggrieved employee for each initial violation and two
9 hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful
10 or intentional violation (penalty amounts established by California Labor Code
11 § 225.5).

12 C. For violations of California Labor Code § 226, two hundred fifty
13 dollars (\$250.00) per employee for initial violation and one thousand dollars
14 (\$1,000.00) per employee for each subsequent violation (penalty amounts
15 established by California Labor Code § 226.3).

16 D. For violations of California Labor Code §§ 510 and 512, fifty
17 dollars (\$50.00) for each aggrieved employee for each initial violation for pay
18 period for which the employee was underpaid and one hundred dollars (\$100.00)
19 for each underpaid employee for each pay period for which the employee was
20 underpaid (penalty amounts established by California Labor Code § 558).

21 E. For violations of California Labor Code § 1174, five hundred
22 dollars (\$500.00) for each Aggrieved Employee for each initial violation (penalty
23 amounts established by Labor Code § 1174.5).

24 F. For violations of California Labor Code § 1197, one hundred
25 dollars (\$100.00) for each Aggrieved Employee for each initial and intentional
26 violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for
27 each subsequent violation, per pay period (regardless of whether the initial
28



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violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

G. For violations of California Labor Code §§ 201, 202, 203, 1194, and 1198, 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 established by California Labor Code § 2699(f)(2)).

H. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

59. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated April 20, 2022, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and 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’s letter to the LWDA dated April 20, 2022 is attached hereto as Exhibit A. The LWDA has not responded to Plaintiff’s letter.

60. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

61. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys’ fees; and
- D. Such other relief as the Court deems just and proper.

///



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Respectfully submitted,

David Spivak

By:

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EXHIBIT A



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Stacy Sussman <stacy@spivaklaw.com>

Thank you for your Other Response or Document Submission

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: stacy@spivaklaw.com

Wed, Apr 20, 2022 at 10:23 AM

04/20/2022 10:22:33 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Other Response or Document Submission

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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



SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

April 20, 2022

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

Re: Genaro Reyes Villagra / Innovative Produce

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Genaro Reyes Villagra (hereafter “Reyes Villagra” or “Complainant”) provides notice that Innovative Produce, Inc., a California corporation, and related entities (collectively “the Innovative Produce Employers” or “the Employers”) violated his rights and those of all other individuals the Innovative Produce Employers have employed or otherwise contracted with in California as hourly and piece rate non-exempt employees, including but not limited to farm workers, produce 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, 221, 226, 510, 1174, 1194, 1197, 1198, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Reyes Villagra hereby provides this notice to the Labor & Workforce Development Agency and the Innovative Produce Employers and their agents and representatives.

At all relevant times, the Innovative Produce Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Reyes Villagra 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 approximately 2016, the Innovative Produce Employers began to employ Reyes Villagra in Santa Maria in the position of hourly, non-exempt farm worker. The Innovative Produce Employers continuously employed him in that capacity until on or about August 9, 2021 when his employment ended.

At all relevant times, the Innovative Produce Employers issued wages to Reyes Villagra and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, the Innovative Produce Employers classified Reyes Villagra and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. Reyes Villagra and the other Aggrieved Employees often worked more than 10 hours per day. However, the Innovative Produce Employers usually only credited Reyes Villagra and the other Aggrieved Employees with nine or less hours of work per day to avoid paying all regular, overtime, and minimum wages earned. Additionally, Reyes Villagra and the other Aggrieved Employees non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Innovative Produce Employers failed to pay Villagra and all of the other Aggrieved Employees overtime premium wages on such bonus compensation.

The Innovative Produce Employers unlawfully deducted wages belonging to Reyes Villagra and all of the other Aggrieved Employees. The Innovative Produce Employers deducted hours worked from the total daily hours worked by Reyes Villagra and the other Aggrieved Employees.

At all relevant times, the Innovative Produce Employers failed to issue to Reyes Villagra 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 Innovative Produce Employers knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all

unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address. Instead of listing the legal address of the Innovative Produce Employers, the Innovative Produce Employers only listed a post office box on the wage statements they issued to Reyes Villagra and the other Aggrieved Employees.

The Innovative Produce Employers also failed to timely pay Reyes Villagra and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Innovative Produce Employers failed to maintain accurate employee records of Reyes Villagra and all of the other Aggrieved Employees. Defendant did not maintain records of the start and stop times of the work Reyes Villagra and the other Aggrieved Employees worked, instead maintaining only incomplete reports of the total hours worked per day.

For the reasons stated herein, Reyes Villagra 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 Innovative Produce Employers failed to pay Reyes Villagra 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 wages;
- (b) The Innovative Produce Employers unlawfully deducted wages belonging to Reyes Villagra and all of the other Aggrieved Employees;
- (c) The Innovative Produce Employers knowingly and intentionally failed to provide Reyes Villagra and all of the other Aggrieved Employees with accurate wage statements;
- (d) The Innovative Produce Employers willfully failed to timely pay Reyes Villagra and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Innovative Produce Employers and when their employment ended; and

- (e) The Innovative Produce Employers failed to maintain accurate employment records pertaining to Reyes Villagra and all of the other Aggrieved Employees.

Accordingly, Reyes Villagra now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Innovative Produce 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 Innovative Produce “Employers, Reyes Villagra, and all of the Aggrieved Employees were covered by the Wage Order because Reyes Villagra and all of the Aggrieved Employees worked for the Innovative Produce Employers as farm workers, and similar occupations. Accordingly, Reyes Villagra 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 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.

Reyes Villagra and the other Aggrieved Employees often worked more than 10 hours per day. However, the Innovative Produce Employers usually only credited Reyes Villagra and the other Aggrieved Employees with nine or less hours of work per day to avoid paying all regular, minimum, and overtime wages earned. Additionally, Reyes Villagra and the other Aggrieved Employees non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Innovative Produce Employers failed to pay Villagra and all of the other Aggrieved Employees overtime premium wages on such bonus compensation. Additionally, on occasions when they did pay for overtime hours worked, the Innovative Produce Employers failed to pay Villagra and all of the other

Aggrieved Employees such overtime pay at the correct rates, instead paying for overtime hours at lower rates or the regular rates of pay.

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 Innovative Produce Employers, Reyes Villagra and all of the other Aggrieved Employees earned bonuses, and related compensation during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Innovative Produce Employers, Reyes Villagra failed to pay to Reyes Villagra and all of the other Aggrieved Employees bonuses overtime and double time premium pay on such bonuses, and related compensation.

At all relevant times during the applicable limitations period, the Innovative Produce Employers failed to compensate Reyes Villagra 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, Reyes Villagra 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)).

Unlawful Deductions **(Lab. Code § 221)**

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” The Innovative Produce Employers deducted wages from the wages earned by Reyes Villagra and all of the other Aggrieved Employees for hours worked and similar deductions in violation of Labor Code § 221. Accordingly, Reyes Villagra seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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
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 Innovative Produce 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 Innovative Produce Employers failed to state in the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees 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). The Innovative Produce Employers knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address and similar information. Instead of listing the legal address of the Innovative Produce Employers, the Innovative Produce Employers only listed a post office box on the wage statements they issued to Reyes Villagra and the other Aggrieved Employees. Accordingly, Reyes Villagra seeks civil penalties for the Labor Code violations that the Innovative Produce 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 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 Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for wages earned, including overtime wages, at the intervals stated above. As a result, the Innovative Produce Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Reyes Villagra now seeks civil penalties for the Labor Code violations that the Innovative Produce 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 Innovative Produce Employers failed to pay Reyes Villagra 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 Reyes Villagra, including

overtime wages and similar forms of compensation. By failing to pay Reyes Villagra and all of the other Aggrieved Employees as set forth above at the end of employment, the Innovative Produce Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Reyes Villagra seeks civil penalties from the Innovative Produce 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 Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address. As a result, the Innovative Produce Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Reyes Villagra and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Reyes Villagra 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 Genaro Reyes Villagra 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,



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cc: Mr. Genaro Reyes Villagra

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