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Attorneys for Plaintiff,

GENARO REYES VILLAGRA, and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SANTA BARBARA**

**(UNLIMITED JURISDICTION)**

GENARO REYES VILLAGRA, on behalf of himself and all others similarly situated, and the general public, and as an “aggrieved employee” on behalf of himself and other similarly situated “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

*Plaintiff,*

vs.

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

*Defendants.*

**FILED**

SUPERIOR COURT of CALIFORNIA

COUNTY of SANTA BARBARA

**02/21/2024**

Darrel E. Parker, Executive Officer

BY Willoughby, Norma

Deputy Clerk

LEAD CASE NO. 22CV02747  
[Consolidated with 22CV02744]

**[PROPOSED] FIRST AMENDED  
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 §§ 221, 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code § 203);



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6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and  
7. Civil Penalties (Lab. Code §§ 2698, et seq.).

**JURY TRIAL DEMANDED**

Plaintiff, Genaro Reyes Villagra (hereafter “Plaintiff” or “Reyes Villagra”), on behalf of himself and all others similarly situated, complains and alleges as follows:

**I. INTRODUCTION**

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

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

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

(B) Provide all meal periods;

(C) Authorize and permit all rest breaks and recovery periods;

(D) Pay premium wages for unprovided or noncompliant meal periods;

(E) Pay premium wages for unprovided or noncompliant rest breaks;

(F) To keep accurate records required by law;

(G) Issue only accurate and complete itemized wage statements;

(H) Timely pay wages upon termination of employment;

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

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## **II. THE PARTIES**

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

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

5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of 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 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



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1 employed in California as hourly, non-exempt employees, including but not limited to farm  
2 workers, produce pickers, harvesters, individuals performing work comparable to the  
3 aforementioned, compensated comparably to the aforementioned, individuals in similar positions,  
4 at any time during the period beginning four years prior to the filing of this action and ending on  
5 the date that final judgment is entered in this action (“Class” or “Class Members”).

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

9 12. **Numerosity:** The Class Members are so numerous that the individual joinder of  
10 each individual Class Member is impractical. While Plaintiff does not currently know the exact  
11 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the  
12 minimum required for numerosity under California laws.

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

16 A. Whether Defendants failed to pay all wages earned to Class Members for  
17 all hours worked at the correct rates of pay, including minimum, regular, overtime, and  
18 doubletime wages, including at the intervals required by law;

19 B. Whether Defendants failed to provide the Class Members with all meal  
20 periods in compliance with California law;

21 C. Whether Defendants failed to authorize and permit the Class Members to  
22 take all rest and recovery periods in compliance with California law;

23 D. Whether Defendants unlawfully deducted wages from Class Members;

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

26 F. Whether Defendants willfully failed to provide the class with timely final  
27 wages;

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

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



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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.

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, discing, and fertilizing the soil;
- (2) The sowing and planting of any agricultural or horticultural commodity;



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- (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 Class Members were covered by the Wage Order because the Defendants operated, and Reyes Villagra, and all of the Class Members worked for, one or more establishments operated as agriculture businesses. Accordingly, Reyes Villagra and all of the other Class Members are entitled to the protections the Wage Order provides.

19. In 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.

20. At all relevant times, the Defendants issued wages to Reyes Villagra and all of the other Class Members on a basis and paid them by the hour. At all relevant times, the Defendants classified Reyes Villagra 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 willfully misclassified Reyes Villagra and all of the other Class Members as independent contractors. At all relevant times with regard to Reyes



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Villagra and all of the other Class Members, the Defendants . At all relevant times, Reyes Villagra and all of the other Class Members were employees of the Defendants. The Defendants engaged, suffered, and permitted them to work. The Defendants knew or should have known their actions of misclassifying Reyes Villagra and all of the other Class Members as independent contractors violated California law.

22. At all relevant times, the Defendants failed to compensate Reyes Villagra and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. Reyes Villagra and the other Class Members usually worked from 6:00 a.m. to 5:30 p.m. Monday through Friday. However, the Defendants usually only credited Reyes Villagra and the other Class Members with nine hours of work per day to avoid paying all regular and minimum wages earned.

23. At all relevant times, the Defendants failed to compensate Reyes Villagra and all of the other Class Members at the correct rates of pay for all overtime hours. Reyes Villagra and Class Members worked overtime that either altogether went unpaid, or which was paid, but at an incorrect rate. Additionally, Reyes Villagra and the other Class Members non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Defendants failed to pay Villagra and all of the other Class Members overtime premium wages on such bonus compensation.

24. At all relevant times, the Defendants failed to compensate Reyes Villagra and all of the other Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek.

25. At all relevant times, the Defendants failed to provide Reyes Villagra and all of the other Class Members with all timely 30-minute, off-duty meal periods. The Defendants also failed to pay premium wages for days on which it failed to provide Reyes Villagra and all of the other Class Members with meal periods as required by law.

26. At all relevant times, the Defendants failed to authorize and permit Reyes Villagra and all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof, or recovery periods as required by law. The Defendants also failed to pay premium wages for days on which it failed to authorize and permit Reyes Villagra and all of the other Class Members to take rest breaks as required by law.

27. At all relevant times, the Defendants unlawfully deducted wages belonging to



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1 Reyes Villagra and all of the other Class Members. The Defendants deducted hours worked from  
2 the total daily hours worked by Reyes Villagra and the other Class Members, and engaged in  
3 other unlawful and unauthorized deductions.

4 28. At all relevant times, the Defendants failed to issue to Reyes Villagra and all of  
5 the other Class Members complete and accurate wage statements that state all hours worked at  
6 the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed  
7 to state on the wage statements they issued to Reyes Villagra and all of the other Class Members  
8 the unpaid wages discussed above. The wage statements fail to state all overtime wages earned,  
9 all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully  
10 deducted wages, all earned wages subject to discount, address of employer, the employer's name  
11 and address, and related information. Instead of listing the legal address of the Defendants, the  
12 Defendants only listed a post office box on the wage statements they issued to Reyes Villagra and  
13 the other Class Members. In addition to this, Defendants failed to keep accurate records of similar  
14 information that the law, including but not limited to Labor Code §1174 and 8 CCR §11140, Sec.  
15 7, required them to keep.

16 29. At all relevant times, the Defendants also failed to timely pay Reyes Villagra and  
17 all of the other Class Members all earned wages as described above during and at the conclusion  
18 of employment, or at the regularly scheduled intervals established by law.

19 30. At all relevant times, the Defendants failed to maintain accurate employee records  
20 of Reyes Villagra and all of the other Class Members. Defendants did not maintain records of the  
21 start and stop times of the work Reyes Villagra and the other Class Members worked, instead  
22 maintaining only incomplete reports of the total hours worked per day.

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

- 25 A. Not provided with all off duty meal periods;
- 26 B. Not authorized and permitted to take all rest break periods and recovery  
27 periods;
- 28 C. Not paid one hour's pay for each workday in which Defendants failed to  
authorize and permit them to take one or more timely rest periods or recovery periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to  
provide them with one or more timely meal periods;



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- 1 E. Not paid all wages earned, including, but not limited to, minimum, regular,  
2 overtime, and doubletime wages for work performed;  
3 F. Suffering from unlawful deductions;  
4 G. Suffering from Defendant's failure to keep accurate records;  
5 H. Not provided with accurate and complete wage statements; and  
6 I. Not timely paid all earned and unpaid wages at the time their employment  
7 ended.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE  
10 CORRECT RATES**

11 **Lab. Code §§ 221, 510, 1194, 1197, and 1198**

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

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

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

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

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

21 35. Section 3 of the Wage Order states:

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

25 (1) Such employees shall not be employed more than ten (10) hours in  
26 any one workday or more than six (6) days in any workweek unless  
27 the employee receives one and one-half (1 1/2) times such  
28 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:



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- (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.



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(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.

36. 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.

37. 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.

38. 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.

39. 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.

40. Labor Code section 1198 makes it unlawful for an employer to employ an



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employee under conditions that violate the Wage Order.

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

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

43. 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.

#### **B. UNLAWFUL WAGE DEDUCTIONS**

44. 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 Defendants deducted wages from the wages earned by Reyes Villagra and all of the other Class Members for in violation of Labor Code § 221.

45. 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' deduction of wages belonging to Plaintiff and the other Class Members in violation of California law.

### **SECOND CAUSE OF ACTION**

#### **FAILURE TO PROVIDE MEAL PERIODS**

##### **Lab. Code §§ 226.7 and 512**

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

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

47. 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 California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.



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1 48. In relevant part, California Labor Code § 1198 states:

2 The maximum hours of work and the standard conditions of labor fixed by the  
3 commission shall be the maximum hours of work and the standard conditions of  
4 labor for employees. The employment of any employee for longer hours than those  
fixed by the order or under conditions of labor prohibited by the order is unlawful.

5 49. In relevant part, In relevant part, California Labor Code § 512 states:

6  
7 An employer shall not employ an employee for a work period of  
8 more than five hours per day without providing the employee with  
9 a meal period of not less than 30 minutes, except that if the total  
work period per day of the employee is no more than six hours, the  
meal period may be waived by mutual consent of both the  
employer and employee.

10  
11 An employer shall not employ an employee for a work period of  
12 more than 10 hours per day without providing the employee with  
13 a second meal period of not less than 30 minutes, except that if the  
total hours worked is no more than 12 hours, the second meal  
period may be waived by mutual consent of the employer and the  
employee only if the first meal period was not waived.

14 50. In relevant part, Section 11 of the Wage Order states:

15  
16  
17 (A) An employer may not employ an employee for a work period of more than  
18 five (5) hours without providing the employee with a meal period of not  
19 less than 30 minutes, except that when a work period of not more than six  
20 (6) hours will complete the day's work the meal period may be waived by  
mutual consent of employer and employee. Unless the employee is  
relieved of all duty during a 30 minute meal period, the meal period shall  
be considered an "on duty" meal period and counted as time worked. An  
"on duty" meal period shall be permitted only when the nature of the work  
prevents an employee from being relieved of all duty and when by written  
agreement between the parties an on-the-job paid meal period is agreed to.

21  
22  
23 (B) An employer may not employ an employee for a work period of more than  
24 ten (10) hours per day without providing the —7 employee with a second  
meal period of not less than 30 minutes, except that if the total hours  
worked is no more than 12 hours, the second meal period may be waived  
by mutual consent of the employer and the employee only if the first meal  
period was not waived.

25  
26  
27  
28 (See California Labor Code, Section 512)



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1           51.     In relevant part, California Labor Code § 226.7 states:

2                   (b)     An employer shall not require an employee to work during  
3                             a meal or rest period mandated pursuant to an applicable  
4                             statute, or applicable regulation, standard, or order of the  
5                             Industrial Welfare Commission, the Occupational Safety  
6                             and Health Standards Board, or the Division of  
7                             Occupational Safety and Health.

8                   (c)     If an employer fails to provide an employee a meal period  
9                             or rest period in accordance with a state law, including, but  
10                            not limited to, an applicable statute or applicable  
11                            regulation, standard, or order of the Industrial Welfare  
12                            Commission, the Occupational Safety and Health  
13                            Standards Board, or the Division of Occupational Safety  
14                            and Health, the employer shall pay the employee one  
15                            additional hour of pay at the employee's regular rate of  
16                            compensation for each work day that the meal or rest  
17                            period is not provided.

18           52.     Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the  
19     Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day  
20     they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled  
21     to a second 30-minute meal period when they worked more than 10 hours in a workday.

22           53.     Defendants intentionally failed to provide Plaintiff and the Class Members with  
23     all required 30-minute duty free meal periods in accordance with the Wage Order.

24           54.     At all relevant times, Defendants failed to provide Plaintiff and the Class Members  
25     with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members  
26     their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants  
27     failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class  
28     Members with timely meal periods.

          55.     Plaintiff is informed and believes and thereon alleges that, at all relevant times  
within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy  
which resulted in Defendants not providing the and the Class Members with all off-duty meal  
periods required by California law.

          56.     As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have  
suffered damages in amounts subject to proof to the extent they were not paid additional wages



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1 owed for all meal periods not provided to them.

2 57. By reason of the above, Plaintiff and the Class Members are entitled to premium  
3 wages for workdays in which one or more meal periods were not provided to them pursuant to  
4 California Labor Code § 226.7.

### 5 **THIRD CAUSE OF ACTION**

#### 6 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS AND RECOVERY** 7 **PERIODS**

#### 8 **Lab. Code § 226.7**

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

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

11 59. At all relevant times during the applicable limitations period, Plaintiff and the  
12 Class Members have been employees of Defendants and entitled to the benefits and protections  
13 of California Labor Code §§ 226.7 and 1198, 8 CCR §3395, and the Wage Order.

14 60. In relevant part, California Labor Code § 1198 states:

15 The maximum hours of work and the standard conditions of labor  
16 fixed by the commission shall be the maximum hours of work and  
17 the standard conditions of labor for employees. The employment  
18 of any employee for longer hours than those fixed by the order or  
19 under conditions of labor prohibited by the order is unlawful.

20 61. In relevant part, Section 12 of the Wage Order states:

21 Every employer shall authorize and permit all employees to take rest periods,  
22 which insofar as practicable shall be in the middle of each work period. The  
23 authorized rest period time shall be based on the total hours worked daily at the  
24 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.  
25 However, a rest period need not be authorized for employees whose total daily  
26 work time is less than three and one-half (3½) hours. Authorized rest period time  
27 shall be counted, as hours worked for which there shall be no deduction from  
28 wages.

62. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during  
a meal or rest period mandated pursuant to an applicable  
statute, or applicable regulation, standard, or order of the  
Industrial Welfare Commission, the Occupational Safety



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and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

63. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof. They were also entitled to take other recovery periods, in addition to their rest periods, when the law and circumstances of the day so required.

64. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order. Defendants denied Plaintiff and the Class Members recovery periods when they were entitled to them.

65. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class Members for days on which they failed to authorize and permit Plaintiff and the other Class Members to take timely rest periods.

66. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed to authorize and permit them to take 10-minute rest periods every four hours worked or major fraction thereof.

67. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to



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1 take all rest breaks required by California law.

2 68. Defendants failed to provide Plaintiff with all required rest breaks in accordance  
3 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times  
4 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy  
5 which resulted in Defendants not providing the Class Members with all rest breaks required by  
6 California law.

7 69. Defendants failed to pay Plaintiff the additional wages required by California  
8 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and  
9 thereon alleges that, at relevant times within the applicable limitations period, Defendants have  
10 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the  
11 Class Members with additional wages for all rest breaks not provided to them as required by  
12 California Labor Code § 226.7.

13 70. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have  
14 suffered damages in amounts subject to proof to the extent they were not paid additional wages  
15 owed for all rest breaks not provided to them.

16 71. By reason of the above, Plaintiff and the Class Members are entitled to premium  
17 wages for workdays in which one or more rest breaks were not provided to them pursuant to  
18 California Labor Code § 226.7.

#### 19 **FOURTH CAUSE OF ACTION**

#### 20 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

#### 21 **Lab. Code § 226**

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

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

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

- 27 1. Gross wages earned;
- 28 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;



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

Lab.Code § 266(a).

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



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

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

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

7 76. As alleged herein, at all relevant times during the applicable limitations period,  
8 Defendants violated California Labor Code section 226 because they did not properly and  
9 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,  
10 the corresponding number of hours worked at each rate by the employee and other requirements  
11 of California Labor Code section 226. Defendants failed to state in the wage statements they  
12 issued to Plaintiff and the other Class Members all their hours worked and wages earned,  
13 including, but not limited to, regular and overtime wages for work they performed off-the-clock  
14 after clocking-out (as described above). Defendants knowingly and intentionally did not issue  
15 either as a detachable part of the check, draft, or voucher paying the employee's wages, or  
16 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class  
17 Members that state all overtime wages earned, all doubletime wages earned, all minimum wages  
18 earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to  
19 discount, address of employer, and the employer's name and address. Instead of listing the legal  
20 address of the Defendants, the Defendants only listed a post office box on the wage statements  
21 they issued to Reyes Villagra and the other Class Members.

22 77. Defendants' failure to provide Plaintiff and the other Class Members with accurate  
23 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and  
24 the other Class Members with accurate wage statements but intentionally provided wage  
25 statements that Defendants knew were not accurate.

26 78. Similarly, section 7(C) of the Wage Order states:

27 Every employer shall semimonthly or at the time of each payment of wages  
28 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;



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- (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.

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

### **FIFTH CAUSE OF ACTION**

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

**(Lab. Code §§ 201, 202, and 203)**

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

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

81. At all relevant times during the applicable limitations period, Plaintiffs and the 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.

82. 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.

83. 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.



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1           84.     The Defendants failed to pay Reyes Villagra and all of the other Class Members  
2 whose employment ended all of the earned but unpaid wages described above by the conclusion  
3 of their employment with Reyes Villagra, including overtime wages.

4           85.     By failing to pay such earned wages to Plaintiff and the Class Members,  
5 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code  
6 § 201 or § 202.

7           86.     Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff  
8 and the Class Members all of their earned and unpaid wages (described above) have been willful  
9 in that, at all relevant times, Defendants have deliberately maintained policies and practices that  
10 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,  
11 they have had the ability to comply with those legal requirements.

12           87.     Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of  
13 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time  
14 penalties for each Class Member.

#### 15                           **SIXTH CAUSE OF ACTION**

#### 16                           **UNFAIR COMPETITION**

17                           **(Bus. & Prof. Code §§ 17200, *et seq.*)**

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

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

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

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

28           91.     As a result of Defendants' unfair competition as alleged herein, Plaintiff and the  
Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class  
Members were deprived of regular wages, minimum wages, overtime wages, doubletime wages,  
and comparable money and property.



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1 California Labor Code § 226(a) and the employee cannot “promptly and easily determine” from  
2 the wage statement alone one or more of the following:

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

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

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

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

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

17 100. As alleged herein, Defendants failed to provide Plaintiff and the Aggrieved  
18 Employees all wages owed, including but not limited to, all regular and overtime wages owed at  
19 the correct rates. As a result, Defendants have failed to properly and accurately itemize each  
20 employee’s gross wages earned, net wages earned, the total hours worked, the corresponding  
21 number of hours worked by employees, and other requirements of California Labor Code § 226.  
22 As a result, Defendants have violated California Labor Code § 226.

23 101. Defendants’ failure to provide Plaintiff and the Aggrieved Employees with  
24 accurate wage statements was knowing and intentional. Defendants had the ability to provide  
25 Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided  
26 wage statements that Defendants knew were not accurate.

27 102. As a result of being provided with inaccurate wage statements by Defendants,  
28 Plaintiff and the 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



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1 and mathematical computations to determine the amounts of wages owed, has caused difficulty  
2 and expense in attempting to reconstruct time and pay records and/or has led to the submission  
3 of inaccurate information about wages to state and federal government agencies. Further,  
4 Plaintiff and the Aggrieved Employees were not able to ascertain from the wage statements  
5 whether Defendants complied with their obligations under California Labor Code § 226(a).

6 103. Labor Code § 1174 states:

7 Every person employing labor in this state shall:

8 ...

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

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

21 104. Labor Code § 1174.5 states:

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

27 105. Section 7 of the Wage Order states,

28 (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.



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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.

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

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

108. Labor Code § 204 states:

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



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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.

109. Because of Defendants' failure to pay Plaintiff and the Aggrieved Employees regular and overtime wages for off-the-clock work and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Defendants failed to timely pay all wages due during employment to Plaintiff and the Aggrieved Employees.

110. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

111. 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.

112. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198 during



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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 for each subsequent violation (penalty amounts established by California Labor Code § 210).

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

C. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

D. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for each initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 558).

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

F. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed)(penalty amounts established by California Labor Code § 1197.1).

G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 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. For all other violations stated in Plaintiff's PAGA notice or for which



SPIVAK LAW  
EMPLOYEE RIGHTS

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West Hollywood, CA 90069  
(213) 725-9094 Tel  
(213) 634-2485 Fax  
SpivakLaw.com

Office:  
1801 Century Park East  
25th Fl  
Los Angeles, CA 90067

1 Plaintiff is entitled to recover under the law.

2 113. Plaintiff has complied with the procedures for bringing suit specified in California  
3 Labor Code § 2699.3. By letters dated April 20, 2022 and October 6, 2023, Plaintiff gave written  
4 notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and  
5 Defendants of the specific provisions of the California Labor Code alleged to have been violated,  
6 including the facts and theories to support the alleged violations. A true and correct copy of  
7 Plaintiff’s letter to the LWDA dated April 20, 2022 is attached hereto as **Exhibit A**. The LWDA  
8 has not responded to Plaintiff’s letter. A true and correct copy of Plaintiff’s letter to the LWDA  
9 dated October 6, 2023 is attached hereto as **Exhibit B**. The LWDA has not responded to  
10 Plaintiff’s letter.

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

#### 14 **V. PRAYER FOR RELIEF**

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

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

19 B. An order that Plaintiff be appointed class representative;

20 C. An order that counsel for Plaintiff be appointed class counsel;

21 D. Unpaid wages, including minimum, regular, overtime, double-time, split  
22 shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery  
23 time, and reporting time wages;

24 E. Liquidated damages;

25 F. Statutory penalties, including waiting time penalties;

26 G. Civil Penalties;

27 H. Restitution;

28 I. Declaratory relief;

J. Actual damages;

K. Pre-judgment interest;

L. Costs of suit;



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1 M. Reasonable attorneys' fees; and

2 N. Such other relief as the Court deems just and proper.

3 **VI. DEMAND FOR JURY TRIAL**

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

6 Respectfully submitted,

7 THE SPIVAK LAW FIRM

8 Dated: February 9, 2024

9 By: 

10 DAVID G. SPIVAK and LAUREN R.  
11 DAVIS, Attorneys for Plaintiff,  
12 GENARO REYES VILLAGRA, and  
13 all others similarly situated  
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Los Angeles, CA 90067

# **EXHIBIT A**



**\*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,



David Spivak, Esq.

David@spivaklaw.com

cc: Mr. Genaro Reyes Villagra

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Innovative Produce, Inc.  
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# **EXHIBIT B**



THE SPIVAK LAW FIRM  
EMPLOYEE RIGHTS

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15303 Ventura Bl Ste 900 Sherman Oaks CA 91403 Office  
(213) 725-9094 Tel  
(213) 634-2485 Fax  
spivaklaw.com Web

**\*SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL\***

October 6, 2023

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

Attn: PAGA Administrator  
California Division of Occupational Safety and Health (Cal/OSHA)  
<http://dir.tflaforms.net>  
*Via Electronic Submission*

Re: Genaro Reyes Villagra / Innovative Produce  
LWDA Case No. LWDA-CM-882417-22

To Whom It May Concern:

This is a supplement to Genaro Reyes Villagra's letter of April 20, 2022 (enclosed).

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, 204b, 206, 207, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and related Labor Code statutes, in addition to related provisions of the applicable Wage Order governing Aggrieved Employees' employment with the Employers, including but not limited to 8 CCR 11140, Secs. 3, 4,

5, 7, 8, 9, 11, 12, 13, and 18. 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”, codified at 8 CCR 11140) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

### **Statement of Facts**

At all relevant times, the Innovative Produce Employers failed to provide Reyes Villagra and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods in violation of applicable law, including but not limited to Labor Code §512 and 8 C.C.R. §11140, Sec. 11, giving rise to penalties under Labor Code §558 and 8 CCR 11140, Sec. 18. In addition to other violations, the Innovative Produce Employers unlawfully deducted Aggrieved Employees pay as though they took legally compliant meal periods, though they did not, resulting in meal period violations and unlawful deductions of wages in violation of Labor Code §221, giving rise to penalties under Labor Code §225.5. The Innovative Produce Employers also failed to pay premium wages for days on which it failed to provide Reyes Villagra and all of the other Aggrieved Employees with meal periods as required by law, including but not limited to Labor Code §226.7, giving rise to penalties under Labor Code §§558 and 2699, in addition to 8 CCR §11140, Sec. 18.

In addition to unlawfully deducting Aggrieved Employees’ pay as though they took meal periods in pay periods where they did not, the Innovative Produce Employers made other unlawful deductions from Aggrieved Employees’ wages, that were not required by law nor authorized in writing by employees. As a result, the Innovative Produce Employers violated Labor Code §221, giving rise to penalties under Labor Code §225.5.

At all relevant times, the Innovative Produce Employers failed to authorize and permit Reyes Villagra and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof, or recovery periods required by law, thereby violating applicable law, including but not limited to 8 CCR

§11140, Sec. 12 and 8 CCR §3395. The Innovative Produce Employers also failed to pay premium wages for days on which it failed to authorize and permit Reyes Villagra and all of the other Aggrieved Employees to take rest breaks as required by law, including but not limited to Labor Code §226.7, giving rise to penalties under Labor Code §§558 and 2699, in addition to 8 CCR §11140, Sec. 18.

At all relevant times, the Innovative Produce Employers failed to pay Aggrieved Employees all pay due to them, whether at regularly applicable intervals required by law (including, but not limited to, Labor Code §§204, 204, and/or 204b) or at the time of discharge and/or quitting in violation of Labor Code §§201-203. This failure to pay resulted from, among other things, the Innovative Produce Employers' unlawful deduction of pay associated with meal periods that Aggrieved Employees did not take. On some occasions, the wages that Innovative Produce Employers failed to pay were not in dispute yet they failed to pay in violation of Labor Code §206, giving rise to penalties under Labor Code §2699. The Innovative Produce Employers failure to pay encompassed minimum wage and overtime violations, which violated Labor Code 510 and 8 CCR §11140, Secs. 3-4, giving rise to penalties under Labor Code §§558 and 1197.1.

In some situations, Innovative Produce Employers failed to abide by maximum hours of work and standard conditions of labor fixed by the applicable IWC Wage Order, in violation of Labor Code §1198, giving rise to penalties under Labor Code §2699. On some occasions, Aggrieved Employees worked split shifts, or reported to work and were sent home without being furnished half their scheduled shift, yet the Innovative Produce Employers did not pay split-shift premiums or reporting time pay, in violation of 8 CCR §11140, Secs. 4-5, giving rise to penalties under 8 CCR §11140, Sec. 18.

At all relevant times, the Innovative Produce Employers failed to issue legally compliant wage statements, as the wage statements failed to include information that includes, but is not limited to: gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate when employees were paid on a piece-rate basis, all deductions, net wages earned, the inclusive dates for the period for which the employee is paid, the name of the employee and either the last four of the employee's social security number or another employee identification number, the name and address of the employer, and all applicable hourly rates in effect during the pay period. This conduct violated Labor Code §226, giving rise to penalties under Labor Code §226.3. In addition, the Innovative Produce Employers failed to keep accurate records of similar information that the law, including but not limited to Labor Code §1174 and

8 CCR §11140, Sec. 7, required them to keep. This conduct violated said provisions, giving rise to penalties under Labor Code §1174.5 and 8 CCR §11140, Sec. 18. In some circumstances, the Innovative Produce Employers paid a piece-rate, yet failed to pay non-productive time and/or rest and recovery time as required by law, and failed to itemize either appropriately on Aggrieved Employees' wage statements. This conduct violated Labor Code §226.2, giving rise to penalties under Labor Code §§226.2 and/or 2699.

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 provide Reyes Villagra and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (b) The Innovative Produce Employers failed to authorize and permit Reyes Villagra and all of the other Aggrieved Employees to take rest breaks and recovery periods in compliance with California law;
- (c) The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees at one hour's pay for each day in which the Innovative Produce Employers failed to provide them with one or more meal periods as required by law; and
- (d) The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees at one hour's pay for each day in which the Innovative Produce Employers failed to authorize and permit them to take one or more rest and/or recovery breaks as required by law;
- (e) The Innovative Produce Employers unlawfully deducted wages from Reyes Villagra and all of the other Aggrieved Employees in violation of California law;
- (f) The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees all pay due to them, whether at regularly applicable intervals required by law (including, but not limited to, Labor Code §§204 and 204b) or at the time of discharge and/or quitting in

violation of Labor Code §§201-202, which failure included pay not in dispute, in violation of Labor Code §206. Such failure to pay encompassed minimum wage and overtime violations, in violation of Labor Code §510 and 8 CCCR §11140, Secs. 3-4.

- (g) The Innovative Produce Employers failed, with respect to Reyes Villagra and all of the other Aggrieved Employees, to abide by maximum hours of work and standard conditions of labor fixed by the applicable IWC Wage Order, in violation of Labor Code §1198.
- (h) The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees split shift differentials and/or reporting time pay when due to them, in violation of 8 CCR §11140, Secs. 4-5.
- (i) The Innovative Produce Employers failed to issue to Reyes Villagra and to all other Aggrieved Employees legally compliant wage statements, in violation of Labor Code §226. Correspondingly, they failed to keep accurate records relating to Reyes Villagra's and all other Aggrieved Employees' employment, in violation of Labor Code §1174 and 8 CCR §11140, Sec. 7.
- (j) The Innovative Produce Employers paid Reyes Villagra and other Aggrieved Employees a piece-rate, yet failed to accurately pay non-productive time and/or rest and recovery time as required by law, in violation of §226.2, and further failed to list such information accurately in employees' wage statements.

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.

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**Failure to Provide Meal Periods**  
**(Lab. Code §§ 226.7, 512, and 1198)**

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 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

- (A) An employer may not employ an employee for a work period of more than five (5) hours without providing the employee with a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.

- (A) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the —7 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(See California Labor Code, Section 512)

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Innovative Produce Employers failed to provide Reyes Villagra and all of the other Aggrieved Employees with all timely meal periods. The Innovative Produce Employers denied Reyes Villagra and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Furthermore, the Innovative Produce Employers failed to pay premium wages for days on which they failed to provide Reyes Villagra and all of the other Aggrieved Employees with timely meal periods. Accordingly, Reyes Villagra now seeks civil penalties for these Labor Code violations that the Innovative Produce 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 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, 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 section 558); and
3. \$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 Authorize and Permit Rest Periods**  
**(Lab. Code §§ 226.7 & 1198)**

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 1198 states, “The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 12 of the Wage Order provides, in relevant part:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted, as hours worked for which there shall be no deduction from wages.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.
- (d) A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

The Innovative Produce Employers failed to authorize and permit Reyes Villagra and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Innovative Produce Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees premium wages on workdays the Innovative Produce Employers failed to provide Reyes Villagra and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Reyes Villagra now seeks civil penalties for these Labor Code violations that the Innovative Produce 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 226.7, 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)).

### **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,



David Spivak, Esq.

[David@spivaklaw.com](mailto:David@spivaklaw.com)

Enclosure as stated

cc: Mr. Genaro Reyes Villagra  
Mr. Louis M. Benowitz Esq.

Innovative Produce, Inc.  
c/o Mr. Michael Joseph Conway II Esq.  
Sagaser Watkins & Wieland PC  
5260 N Palm Ave, Ste 400  
Fresno, CA 93704-2217  
[mikec@sw2law.com](mailto:mikec@sw2law.com)



**\*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,



David Spivak, Esq.

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cc: Mr. Genaro Reyes Villagra

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**PROOF OF SERVICE**

State of California,  
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 1801 Century Park East, 25th Fl, Los Angeles, CA 90067.

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

On Friday, February 09, 2024, I served the foregoing document described as **[PROPOSED] FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

Ian B. Wieland, Esq.  
Michael J. Conway II, Esq.  
Tristan Matthews, Esq.  
SAGASER, WATKINS & WIELAND PC  
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XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address [lizzett@spivaklaw.com](mailto:lizzett@spivaklaw.com).

EXECUTED on Friday, February 09, 2024, at Los Angeles, California.

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

\_\_\_\_ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
LIZZETT CORTEZ