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**MARIO RACHO, in a representative
 capacity, and on behalf of other
 members of the general public
 similarly situated**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES**

MARIO RACHO, an individual, and on behalf of) Case No: **22AHCV00611**
 other members of the general public similarly)
 situated)

Plaintiff,

v.

SJC PRODUE, INC. D.B.A. GREEN ISLAND
 PRODUCE, INC. a California Corporation; and
 DOES 1 through 10, inclusive

Defendant.

COMPLAINT FOR:

1. MINIMUM WAGE VIOLATIONS
PURSUANT TO LABOR CODE §
2698 *et seq.*
2. OVERTIME VIOLATIONS
PURSUANT TO LABOR CODE §
2698 *et seq.*
3. WAGE STATEMENT
VIOLATIONS PURSUANT TO
LABOR CODE § 2698 *et seq.*
4. MEAL AND REST PERIOD
VIOLATIONS PURSUANT TO
LABOR CODE § 2698 *et seq.*
5. FAILURE TO REIMBURSE
PURSUANT TO LABOR CODE §
2698 *et seq.*
6. FAILURE TO TIMELY PAY
WAGES PURSUANT TO LABOR
CODE § 2698 *et seq.*
7. FAILURE TO PAY WAGES UPON
SEPARATION PURSUANT TO
LABOR CODE § 2698 *et seq.*

[JURY TRIAL DEMANDED]

GRUENBERG LAW
 2155 FIRST AVENUE
 SAN DIEGO, CALIFORNIA 92101

COMES NOW Plaintiff MARIO RACHO (“Plaintiff”), individually, and on behalf of all aggrieved employees alleges for his complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) may not be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff injuries occurred in the County of Los Angeles, State of California.
3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant SJC PRODUCE, INC. D.B.A. GREEN ISLAND PRODUCE, INC. (“Green Island” or “Defendant” herein) was and is a California Corporation doing business throughout the state, including the County of Los Angeles , State of California.
4. Plaintiff is presently unaware of the true names, capacities and liability of Defendant named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.
5. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendant is responsible in some manner for the wrongs and damages as herein alleged, and in so acting was functioning as the agent, servant, partner, and employee of the co-Defendant, and in doing the actions mentioned below, was acting within the course and scope of his or her authority as such agent, servant, partner, and employee with the

1 permission and consent of the co-Defendant. Plaintiff injuries as herein alleged were
2 proximately caused by said Defendant. Wherever it is alleged herein that any act or
3 omission was done or committed by any specially named Defendant or Defendant,
4 Plaintiff intends thereby to allege and does allege that the same act or omission was also
5 done and committed by each and every defendant named as a DOE, both separately and
6 in concert with the named Defendant or Defendant.

- 7 6. Plaintiff is informed and believes and thereon alleges that Defendant, and each of them,
8 including DOES 1 through 10, are and at all times herein mentioned were either
9 individuals, sole proprietorships, partnerships, registered professionals, corporations, alter
10 egos or other legal entities which were licensed to do and/or were doing business in the
11 County of Los Angeles, State of California at all times relevant to the subject matter of
12 this action.

13 **FACTUAL BACKGROUND**

- 14 7. In 2021, Plaintiff MARIO RACHO commenced working for Defendant. Plaintiff
15 employment with Defendant lasted through March 2022. Throughout his employment
16 with Defendant, Plaintiff performed his job in a capable and competent manner and was
17 commended for doing so.
- 18 8. Throughout the term of his employment, Plaintiff and all other aggrieved employees
19 were, and currently are, denied the benefits and protections of the Labor Code due to
20 Defendant institutionalized pay practices, standard as to all of Defendant California-
21 based employees.
- 22 9. On June 20, 2022, counsel for Plaintiff prepared and electronically submitted a letter to
23 the LWDA via the California Department of Industrial Relations' "PAGA Filing"
24 website. This letter concerned Green Island. and their Labor Code violations. A copy of
25 this letter was also mailed to Defendant, via USPS Certified Mail. The letter contained
26 the specific provisions of the California Labor Code violated by Defendant, as well as the
27 facts and theories in support of Plaintiff claims. (Please see **Exhibit 1**, a true and correct
28 copy of this letter.)

10. The statutory time period for the LWDA to investigate and/or respond, and for the employer to respond, has concluded.

REPRESENTATIVE ALLEGATIONS

11. As more specifically set forth below, Plaintiff brings this action in a representative capacity on behalf of all current and former nonexempt employees of Defendant. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and Industrial Welfare Commission ("IWC") Wage Order(s) due to Defendant's standard practices. Throughout their employment, Plaintiff and all other aggrieved employees were and are denied full and accurate compensation, including overtime compensation, in violation of, inter alia, Labor Code §§ 510 and 1194. Plaintiff and the other aggrieved employees were and are denied meal and rest periods and meal and rest period payments, in violation of, inter alia, IWC Wage Order 9 (or any other applicable Wage Order) and Labor Code §§ 226.7 and 512. Defendant failed to furnish accurate itemized wage statements in violation of, inter alia, Labor Code § 226. Defendant failed to reimburse Plaintiff and other aggrieved employees for necessary business expenditures in violation of, inter alia, Labor Code § 2802. Defendant failed to provide all compensation due at termination of employment in violation of, inter alia, Labor Code §§ 201 through 203.

12. Plaintiff brings this action on the grounds that he and other similarly situated current and former employees of Defendant were and are improperly denied the mandated wages and reimbursements resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed one hundred (50) aggrieved employees.

13. The approximately Fifty (50) aggrieved employees are comprised of all of Defendant's current and former California-based employees, designated as "nonexempt" by Defendant. Defendant's standard policies and practices which lead to Labor Code violations, as alleged herein, applied to all California nonexempt employees.

- 1 14. There are questions of fact and law common to all aggrieved employees arising from
2 Defendant's actions include, among others, the following:
- 3 a. Whether Defendant failed to pay its employees the proper straight-time, overtime,
4 and double time wages due and owing to them;
- 5 b. Whether Defendant failed to provide its employees with statutorily-compliant
6 Meal and/or Rest Periods, in violation of, inter alia, California Labor Code §§ 512
7 and 226.7, in that Defendant written policies are not compliant with California
8 law, Defendant do not allow its employees duty-free Meal and/or Rest Periods,
9 and Defendant improperly "round" employees recorded Meal Periods;
- 10 c. Whether Defendant failed to properly provide Meal and Rest Period premiums in
11 accordance with law;
- 12 d. Whether Defendant failed to properly calculate and pay its employees Overtime
13 compensation or Meal and Rest Period premiums in accordance with law by
14 failing to properly calculate, into the Regular Rate of Pay, the value of employee
15 benefits;
- 16 e. Whether Defendant failed to properly reimburse its employees for necessary
17 business expenditures for, inter alia, cell phone costs and mileage, in violation of
18 Labor Code § 2802;
- 19 f. Whether Defendant failed to provide all compensation upon termination of
20 employment in violation of Labor Code §§ 201-203, due, in part, to the fact that
21 Defendant failed to provide proper compensation for all hours worked, as
22 discussed above; and
- 23 g. Whether Defendant failed to provide Plaintiff and all other aggrieved employees
24 with accurate itemized wage statements in violation of, among other statutes,
25 Labor Code § 266.
- 26 15. At all times mentioned herein, Defendant were subject to the Labor Code and Industrial
27 Welfare Commission Wage Orders of the State of California, including, but not limited
28 to, California Labor Code § 2698 et seq.

16. At all times mentioned herein, Defendant are and were “employers” as that term is used within the relevant sections of the California Labor Code and the applicable wage order. An employer-employee relationship existed between Plaintiff and Defendant.
17. Plaintiff has exhausted his administrative remedies and pre-filing requirements California Labor Code § 2699.3, and has also fulfilled all notice requirements under the statute. On June 20, 2022, counsel for Plaintiff prepared and electronically submitted a letter to the LWDA via the California Department of Industrial Relations’ “PAGA Filing” website. This letter concerned Green Island. and their Labor Code violations. A copy of this letter was also mailed to Defendant, via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code violated by Defendant, as well as the facts and theories in support of Plaintiff claims. (Please see **Exhibit 1**, a true and correct copy of this letter.)
18. The statutory time period for the LWDA to investigate and/or respond, and for the employers to respond, has concluded.
19. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to Defendant's standard practices. Said violations are set forth below.

FIRST CAUSE OF ACTION

Minimum Wage Violations Pursuant to Labor Code § 2698 *et seq.*

Representative Action

(By Plaintiff Representative against Defendant and DOES 1 through 10)

20. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
21. Defendant failed to pay its employees all compensation due in violation of, among other statutes, Labor Code § 1197. California law holds that the failure to pay for any work time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323. These violations were caused by and through Defendant's failure to maintain accurate Time Records (as required by California law), to the detriment of the employees. Specifically, although Defendant would receive "to-the-minute" start and end times (from their employees' mandated timekeeping practices), Defendant would

thereafter alter - and deduct time from - the Time Records, prior to payment of compensation to the employees. Additionally, the right to receive the proper minimum wage compensation was impacted by Defendant knowingly failing to consider other work performed by the employees, including all time employees were under Defendant control. These actions, and instructions, caused the employees to lose compensation, including proper minimum wage compensation and overtime compensation. Moreover, Defendant instructed its employees to "self-round" their actual work-times, with a lack of specific instruction as to how to accurately - and neutrally - perform such a function. Defendant also instructed its employees to limit the recording of their hours to that of the employee's work schedules only.

22. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

23. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

24. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.

25. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

SECOND CAUSE OF ACTION

Overtime Violations Pursuant to Labor Code § 119.510

Representative Action

(By Plaintiff Representative against Defendant and DOES 1 through 10)

26. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

27. Defendant failed to pay Plaintiff and all other aggrieved employees all compensation, including Overtime Compensation, due in violation of, among other statutes, Labor Code

§ 510. These violations occurred due to Defendant's illegal policies, referenced above, whereby employees experienced monetary under-compensation. Given the length of Plaintiff's, and other employees, shifts the unpaid work time often would have been owed at the overtime rate of pay. These systematic failures to provide proper overtime compensation are in violation of California law.

28. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

29. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

30. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.

31. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

THIRD CAUSE OF ACTION

Wage Statement Violations Pursuant to Labor Code § 226

Representative Action

(By Plaintiff Representative against Defendant and DOES 1 through 10)

32. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

33. Defendant willfully failed to provide Plaintiff and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code § 226. These violations include, but are not limited to, Defendant's failure to accurately identify all applicable regular and overtime rates of pay in violation of section 226(a)(9), and providing inaccurate representations of both "gross" and "net wages." Defendant also failed to provide an accurate showing of the "total hours worked," in violation of Labor Code § 226(a)(2).

- 1 34. Defendant violated Labor Code § 226(a)(1) by failing to furnish an accurate showing of
2 the gross wages earned by its employees. For example, Defendant (a) would not provide
3 compensation for all hours and minutes worked, (b) would use an improper (and lesser)
4 Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period Penalties when
5 due.
- 6 35. Defendant violated Labor Code § 226(a)(2) by failing to furnish an accurate showing of
7 all hours worked at each hourly rate by the employee. Plaintiff and the other employees
8 were not compensated for all hours worked. For example, Defendant required Plaintiff
9 and other nonexempt employees to report estimates of time employees spent working and
10 further instructed employees to not record time spent answering calls, on standby, or
11 driving time. Moreover, the wage statements fail to list the rate of pay for any work
12 performed.
- 13 36. Defendant violated Labor Code § 226(a)(5) by willfully failing to furnish an accurate
14 showing of the gross and net wages earned by its employees. For example, Defendant (a)
15 would not provide compensation for all hours and minutes worked, (b) would use an
16 improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest
17 Period Penalties when due. Further, on the rare occasions in which Defendant would
18 provide a Meal or Rest Period Penalty, it would pay said penalty at an improper (and
19 lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.
- 20 37. Defendant violated Labor Code § 226(a)(9) by failing to furnish an accurate showing of
21 all applicable hourly rates, in effect during the pay period and the corresponding number
22 of hours worked at each hourly rate by the employee. Plaintiff and the other employees
23 were not compensated for all hours worked (Defendant would require employees to list
24 only their scheduled work-times, and failed to pay employees for the actual work-times.)
- 25 38. Defendant's failure to include the above information in its calculation of Plaintiff's, and
26 other aggrieved employees', gross and net wages subjects Defendant to liability under
27 Labor Code § 226.
28

1 39. As a direct result of Defendant's failure to comply with the foregoing provisions of the
2 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
3 amount to be proven at trial.

4 40. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
5 behalf of himself and all other aggrieved employees by and through Labor Code §
6 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
7 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
8 the below Prayer For Relief.

9 41. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
10 Defendant pursuant to Labor Code § 2699(a) for each of these employees.

11 42. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
12 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

13 **FOURTH CAUSE OF ACTION**

14 **Meal and Rest Period Violations Pursuant to Labor Code §§ 226.7 and 512**

15 **Representative Action**

16 **(By Plaintiff Representative against Defendant and DOES 1 through 10)**

17 43. Plaintiff hereby incorporates by reference each and every allegation contained in the
18 preceding paragraphs as though fully set forth herein.

19 44. Labor Code § 1198 states:

20 The maximum hours of work and the standard conditions of labor fixed by
21 the commission shall be the maximum hours of work and the standard
22 conditions of labor for employees. The employment of any employee for
23 longer hours than those fixed by the order or under conditions of labor
24 prohibited by the order is unlawful.

25 Defendant violated this section by establishing working conditions below the standard of
26 the applicable Wage Order.

27 45. Under applicable California law, "An employer may not employ an employee for a work
28 period of more than five hours per day without providing the employee with a Meal
Period of not less than 30 minutes [...] 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" Lab. Code § 512(a); see also 8 Cal. Code Regs.
§ 11090 (11)(A).

- 1 46. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the
2 Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8
3 Cal. Code Regs. § 11090 (11).
- 4 47. California law requires employers to provide nonexempt employees with a 10-minute
5 Rest Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs.
6 § 11090 (12).
- 7 48. An employer who fails to provide Meal or Rest Periods as required by an applicable
8 Wage Order must pay the employee one additional hour of pay at the employee’s regular
9 rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code §
10 226.7(b); 8 Cal. Code Regs. § 11090 (11), (12).
- 11 49. Within the operative time period, Defendant failed to possess compliant Meal and Rest
12 Period policies.
- 13 50. For example, Defendant Rest Period policy and practice does not provide the right for
14 employees to “leave the premises,” by requiring employees to remain by their vehicles
15 during Rest Periods. Additionally, employees often do not have time to take a break due
16 to the volume of orders that must be completed before the end of the employee’s shift.
- 17 51. Defendant Meal and Rest Period policy also assumes that employees have “waived” the
18 right to a legally-compliant Meal or Rest Period, or a Meal or Rest Period penalty
19 payment, unless the employees complete a very specific process of formal notification to
20 the Defendant.
- 21 52. Moreover, Defendant policies and practices preclude “duty-free” Meal and Rest Periods.
22 These institutional and established practices of Defendant are illegal, in that Plaintiff and
23 all other employees were denied proper and/or timely Meal and Rest Periods.
- 24 53. These violations are due, in part, to the fact that Defendant do not possess a legal Rest
25 Period policy or practice, as its Rest Period policy lacks required language, resulting in
26 employees failing to receive all Rest Periods legally due. Defendant do not provide Rest
27 Periods, as defined by California law. Further, Defendant have never provided a Rest
28 Period penalty payment to any employee.

1 54. Defendant also do not possess a legal Meal Period policy, and make no attempt to ensure
2 that its employees are either timely or wholly provided Meal Periods. The employees
3 would often either miss a Meal Period entirely, be provided a short or late Meal Period,
4 or be provided only one Meal Period, even when they were working in excess of 10 hours
5 a day. Additionally, Defendant failed to accurately record its employees actual start and
6 stop times of Meal Periods, in violation of the IWC Wage Orders. 8 Cal. Code Regs. §
7 11090 (7)(A)(3).

8 55. Moreover, Defendant policies and practices preclude “duty-free” Meal and Rest Periods,
9 in that the employees are required to remain “On Call” at all times, including during the
10 Meal and Rest Periods, in order to (among other reasons) deliver the large volume of
11 orders in a timely manner before the end of the shift. These institutional and established
12 practices of Defendant are illegal, in that Plaintiff and all other class members were
13 denied proper and/or timely Meal and Rest Periods.

14 56. Defendant willfully failed and refused to pay Plaintiff and all other class members one
15 additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest
16 Period was not provided, as required by Labor Code § 226.7 and IWC Wage Order 9
17 (11), (12).

18 57. Any payments made by Defendant for missed or late Meal Periods were not paid at an
19 employee’s regular rate in violation of Labor Code § 226.7 and the operative IWC Wage
20 Orders. Instead, these payments were made at an employee’s base rate and did not
21 include the value of, inter alia, additional compensation and/or employee benefits.

22 58. As a direct result of Defendant's failure to comply with the foregoing provisions of the
23 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
24 amount to be proven at trial.

25 59. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
26 behalf of himself and all other aggrieved employees by and through Labor Code §
27 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
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1 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
2 the below Prayer For Relief.

3 60. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
4 Defendant pursuant to Labor Code § 2699(a) for each of these employees.

5 61. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
6 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

7 **FIFTH CAUSE OF ACTION**

8 **Failure to Reimburse Pursuant to Labor Code § 2802**

9 **Representative Action**

10 **(By Plaintiff Representative against Defendant and DOES 1 through 10)**

11 62. Plaintiff hereby incorporates by reference each and every allegation contained in the
12 preceding paragraphs as though fully set forth herein.

13 63. Defendant failed to reimburse their nonexempt employees for all necessary business
14 expenditures incurred in direct consequence of the discharge of their duties in violation
15 of, among other statutes, Labor Code § 2802. These expenditures are the result of, inter
16 alia, Defendant standard policies which require its employees to incur cell phone costs
17 without reimbursement.

18 64. As a direct result of Defendant's failure to comply with the foregoing provisions of the
19 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
20 amount to be proven at trial.

21 65. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
22 behalf of himself and all other aggrieved employees by and through Labor Code §
23 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
24 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
25 the below Prayer For Relief.

26 66. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
27 Defendant pursuant to Labor Code § 2699(a) for each of these employees.

28 67. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

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SIXTH CAUSE OF ACTION

**Failure to Timely Pay Wages Pursuant to Labor Code § 2698 *et seq.*
Representative Action**

(By Plaintiff Representative against Defendant and DOES 1 through 10)

68. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
69. Plaintiff and all other aggrieved employees performed work for Defendant, as an employee of Defendant, as stated herein. Throughout Plaintiff's and all other aggrieved employees' employment, they earned wages that were not paid to them, as stated herein, in an amount according to proof at trial.
70. California Labor Code § 204, applicable at all times relevant herein to Plaintiffs' and all other aggrieved employees' employment by Defendant, provides that all wages earned by any person in any employment are due and payable twice during each calendar month. Defendant failed to pay Plaintiffs and all other aggrieved employees the wages they were entitled to under the Code.
71. During his employment, Plaintiff and all other aggrieved employees were denied proper wages due, in part, Defendant's misclassification of Plaintiff, and other aggrieved employees as "exempt" or "salaried," Despite Defendant's title, Plaintiff and other aggrieved employees were not "exempt" as, among other reasons, they were not paid double the minimum wage, and did not meet the other requirements for the exemption test(s) as codified in IWC Wage Order 9; Cal. Code Regs. Tit. § 11090 (1).
72. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.
73. As a result of Defendant's willful failure to pay wages, in addition to such other damages and penalties as may properly be recovered herein, Plaintiffs and all other aggrieved employees are entitled to back pay, waiting time penalties, interest, costs, and attorneys' fees pursuant to Labor Code §§ 206, 218.5, 218.6, 558, 1194.2, and 1197.1.

1 74. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
2 behalf of himself and all other aggrieved employees by and through Labor Code §
3 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
4 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
5 the below Prayer For Relief.

6 75. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
7 Defendant pursuant to Labor Code § 2699(a) for each of these employees.

8 76. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
9 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

10 **SEVENTH CAUSE OF ACTION**

11 **Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 *et seq.***
12 **Representative Action**

13 **(By Plaintiff Representative against Defendant and DOES 1 through 10)**

14 77. Plaintiff hereby incorporates by reference each and every allegation contained in the
15 preceding paragraphs as though fully set forth herein.

16 78. Defendant willfully failed to provide Plaintiff and other aggrieved employees with all
17 wages earned and unpaid at termination in violation of, among other statutes, Labor Code
18 §§ 201 through 203. These violations resulted from, among other unlawful actions,
19 Defendant willful failure to provide accurate and complete compensation to aggrieved
20 employees under Labor Code §§ 226.7, 510, 512, and 1197.

21 79. Defendant failed to provide all compensation upon termination of employment in
22 violation of Labor Code §§ 201-203 due, in part, to the fact that Defendant failed to
23 provide proper compensation for all hours worked, intentionally misclassified employees
24 as “exempt” and failed to pay meal and/or rest period penalties.

25 80. As a direct result of Defendant's failure to comply with the foregoing provisions of the
26 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
27 amount to be proven at trial.

28 81. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
behalf of himself and all other aggrieved employees by and through Labor Code §

82. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.

83. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

PLAINTIFF COMPLAINT FOR DAMAGES

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff on his own behalf and on behalf of all members of the proposed Class, prays for judgment as follows:

1. For compensatory damages according to proof, as set forth under Labor Code §§ 510, 1194, and 2802, among other statutes;
2. For penalties and restitution of wages according to proof, as set forth under Labor Code §§ 221, 226, 226.7, 450 and 1197.1, among other statutes;
3. For penalties pursuant to Title 8, California Code of Regulations, Wage Order 9 (or any applicable Wage Order);
4. For lost back pay in an amount to be proven;
5. Where available, for liquidated damages pursuant to Labor Code § 1194.2;
6. Where available, for an award of interest, including prejudgment interest, pursuant to Labor Code § 218.6;
7. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code §§ 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5; and
8. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests that this matter be heard and decided by trial by jury.

DATED: August 26, 2022

GRUENBERG LAW



JOSHUA D. GRUENBERG, ESQ.

PAMELA VALLERO, ESQ.

KATHERINE DISHONGH, ESQ.

Attorneys for Plaintiff

**MARIO RACHO in a representative capacity,
and on behalf of other members of the
general public similarly situated**

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EXHIBIT 1

(1) PLAINTIFF'S LETTER FILED WITH THE LABOR AND WORKFORCE
DEVELOPMENT AGENCY

June 20, 2022

Labor and Workforce Development Agency
Attn. PAGA Administrator

Re: Mario Racho v. SJC Produce, Inc. and Green Island Produce, Inc.

Dear Administrator:

Please allow this correspondence to serve as "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by SJC Produce, Inc. d.b.a Green Island Produce, Inc. (hereinafter "Green Island"), in the above-referenced matter.

This "written notice" is filed on behalf of Mario Racho, and all current and former non-exempt employees employed by Green Island. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Green Island are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a), 226.7, 510,511,512,558, 1194, 1197.1, 1198.5, 2699.5, and 2802, as well as IWC Wage Order 9, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11090 et seq.

Facts and theories supporting the allegations: Our client, Mario Racho, worked as a non-exempt employee employed by Green Island from approximately January 2021 until approximately March 2022.

Please Note: The majority of the Labor Code violations experienced by Mr. Racho and others, were initiated by Green Island's categorization of Mr. Racho and others, as "exempt" employees. For example, as these employees were designated as "exempt" by Green Island, they did not receive proper Overtime Compensation, regardless of how many hours a day/week they would work, and were not provided any legal Meal or Rest Periods. However, all of the Labor Code violations were also experienced by Green Island employees, regardless of whether they were misclassified or not.

Throughout the term of Mr. Racho's employment, Green Island required Mr. Racho and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

Green Island failed to provide all compensation, including Minimum Wage and Overtime compensation, as well as compensation work performed inside of Meal and Rest Periods, to its employees in violation of, inter alia, Labor Code sections 1194, 510, IWC Wage Order 9, and any other applicable wage orders. This illegal action is due, in part, to Green Island's policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and Overtime compensation) for all time worked by the employees, or in control of the employer. For instance, as Mr. Racho was misclassified as an exempt employee, he did not receive compensation for working beyond his scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Moreover, Green Island would often require Mr. Racho to work extended hours (beyond his scheduled hours) without compensation.

Additionally, among other issues, Green Island has notice of Mr. Racho, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Period, but fails to provide any compensation for this work-time.

Finally, because Mr. Racho was improperly misclassified as an exempt employee, Green Island failed to properly calculate the legal Overtime Rate of Pay, as Green Island ignores certain compensation when calculating the Regular Rate of Pay.

Failure to Provide Compliant Meal Periods

Green Island failed to provide compliant Meal Periods in violation of, inter alia, Labor Code sections 226.7, 512, and IWC Wage Order 9, or any other applicable wage orders. For example, Green Island does not possess a legal Meal Period policy and makes no attempt to ensure Island its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely or be provided a short or untimely Meal Period. Over the course of his employment, Mr. Racho was instructed on numerous occasions to remain available during his Meal Periods.

Green Island would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to supervisors at all times. On the rare occasions when employees *were* paid Meal Period penalties (i.e.

California Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of 226.7.” (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256.) Even more recently, a 2020 California Supreme Court ruling stated that “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a 226.7 violation.’” *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Green Island failed to pay Meal Period Premiums at the proper rate, as Green Island fails to either **(1)** pay a full hour’s worth of pay, or **(2)** properly calculate the Regular Rate of Pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 864.

Finally, Green Island illegally retained control over its employees during Meal Periods. For example, Green Island required its employees to “remain on the premises” (i.e. remain by their trucks) and to remain “on call” (i.e. monitor their telephones and/or radio systems) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

Green Island failed to provide compliant Rest Periods or requisite Rest Period Penalty Payments, in violation of, inter alia, Labor Code sections 226.7, 512, and IWC Wage Order 9, and any other applicable wage orders. For example, Green Island does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Green Island makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Green Island would pressure its employees to either skip, or cut short, a Rest Period as employees were expected to respond to supervisors at all times. Green Island has never provided a compliant Rest Period Penalty Payment to any employee as to the above-referenced issues. Finally, on the rare occasions in which Green Island would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.

Finally, Green Island illegally retained control over its employees during Rest Periods. For example, Green Island required its employees to “remain on the premises,” (i.e. remain by their trucks) and to remain “On Call” (i.e. monitor their telephones and/or radios) at all times, including during Rest Periods.

Wage Statement Violations

Green Island violated Labor Code section 226(a)(1) by failing to furnish an accurate showing of the gross wages earned by its employees. For example, Green Island **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and lesser) Overtime Rate of Pay, and **(c)** would fail to pay Meal and/or Rest Period Penalties when due.

Green Island violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. The wage statements do not list the hours worked at any rate, for any pay period. Additionally, Mr. Racho, and other employees were not compensated for all hours worked (due in part to Green Island’s requirement that employees list only *scheduled* work-times, not actual work-times.). Furthermore, Green Island failed to state the Overtime Rate of Pay on its earning records.

Green Island violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Green Island **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and lesser) Overtime Rate of Pay, and **(c)** would fail to pay Meal and/or Rest Period penalties when due. Further, on the rare occasions in which Green Island would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.

Green Island violated Labor Code section 226 (a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Green Island’s wage statements do not list the hourly rate for either Regular or Overtime Rates of pay, for any Pay Period. Additionally, Mr. Racho, and the other employees, were not compensated for all hours worked (due in part to Green Island requiring employees to list only *Scheduled* work-time, not actual work-time to include “on-call” hours). In fact, the wage statements only list the type of work performed and not the total amount. The wage statements do not state the hourly rates for any work. Therefore, Green Island failed to provide a showing of the “total hours worked” by its employees pursuant to section 226(a)(2).

Failure to Provide Compliant Expense Reimbursement Payments

Green Island failed to provide compliant expense reimbursement payments in violation of, inter alia, Labor Code section 2802 by failing to provide payments for expenses incurred by Mr. Racho, and other non-exempt employees, including expenses for cell phone costs, other necessary work supplies, and mileage.

Willful Failure to Provide All Compensation to Ex-Employees

Green Island failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due in part, to the fact that Green Island failed to provide proper compensation for all hours worked, and failed to pay full Rest Period penalties, as discussed above. Mr. Racho was terminated in March 2022 and did not receive all wages due and owed to him, including all accrued vacation and sick leave

To confirm, Green Island and SJC, each, are a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction with this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Katherine A Dishongh

Cc: Via Certified U.S. Mail

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