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VIA U.S. CERTIFIED MAIL—RETURN RECEIPT REQUESTED

November 19, 2015

PAGA administrator
1515 Clay Street, Suite 801
Oakland, CA 94612
(510) 286-1362

Dutra Farms
Jim Dutra, and Dutra Farms agents, supervisors, managers, and owners
346 Carlton Road
Watsonville, CA 95076

Premiere Raspberries, LLC
Its agents supervisors, managers, agents, and owners
James Thompson
133 Mission Street Suite 290
Santa Cruz CA 95060

Re: Amended Labor Code §2699 and §2810.3 Notice

Dear PAGA Administrator:

Please consider this a request under Labor Code § 2699.3(a)(1) for the California Labor & Workforce Development Agency ("LWDA" or "Agency") to take action against Christopher Ranch, B&A International Farm Labor Services Inc., does 1-20, and its agents, owners, managers and supervisors (collectively "Defendants"), for violations of the California Labor Code described below. I am writing on behalf of Enoch Cruz Santiago and other aggrieved employees represented by this law firm who seek to assert a PAGA claim on behalf of the State of California and all other current or former employees who have been employed at facilities operated by Defendants.

Further, pursuant to California Labor Code §§ 210, 558, 1197.1 and others please consider this a notice to Defendants and its agents managers and supervisors and any other person acting on

behalf of Defendants who violates, or causes to be violated, sections of the California Labor Code or Wage Orders governing hours and days of work as described below, including all managers, executives, agents, attorneys, attorneys, contractors and supervisors.

This investigation request and notice of California Labor Code violations concerns the systematic failure by Defendants to pay current and former California non-exempt employees in conformance with provisions set out in the California Labor Code and in Wage Orders promulgated by the Industrial Welfare Commission. At the core of Defendants violations are unlawful payroll and labor practices or policies whereby workers are required, suffered or permitted to work without compensation; workers were not advised of their right to take proper rest or recovery breaks, that proper rest and recovery breaks were not made properly available, and that employees were discouraged or otherwise prevented from taking proper breaks. Defendants also enforced a payroll policy whereby workers are not paid the statutorily required premium wages for denied rest and meal periods. Further, Defendants enforced a policy or practice where hours worked are not accurately recorded, and workers are not provided accurate wage statements or paid all wages owed upon separation from employment. Defendant's policy or practice is to compensate non-exempt employees for work completed without compensation for large portions of their work day.

Liability under the Private Attorneys General Act (Cal. Labor Code §§ 2698 *et seq.*) ("PAGA") may be based on a wide variety of Labor Code provisions, including but not limited to §§ 201, 202, 203, 210, 216, 218, 218.6, 223, 225, 226, 226.7, 510, 512, 1174, 1175, 1194, 1194.2, 1197, 1197.1 1199 and 2673.1(a), IWC wage orders, 2699 *et seq.* and all of the provisions listed in Labor Code 2699.5 (including the penalty provisions related to these predicate provisions), among many others. Any violation of these or any other Labor Code provisions serves as the basis for a PAGA claim by an aggrieved employee on behalf of themselves and other current and former employees.

In particular, the policies described above and the violations set forth below relate to all the non-exempt employees employed at Defendants' locations in California:

1. Failure to pay non-exempt employees all wages earned (minimum, contract, overtime, split shift, and reporting time wages, unpaid time), in violation of Cal. Labor Code §§ 201, 202, 221, 510, 1194, 1197.1, 558, and the Wage Orders, by inaccurately keeping records of actual hours worked and wages earned, and by requiring, suffering or permitting employees to work without compensation for all hours worked.
2. Failure to properly provide/authorize (and discouraged) and permit non-exempt employees all required proper timely ten-minute rest breaks and proper timely 30-minute meal breaks to which they are entitled, in violation of Labor Code and Wage Orders, in violation of Cal. Labor Code §§ 226.7, 512 and 558, and failure to pay premium rest and meal period wages.
3. Failure to keep accurate time records, in violation of the Labor Code and Wage Orders.
4. Failure to pay all wages owed immediately or within 72 hours upon separation from employment in violation of Labor Code §§ 201, 202, 203, and 256 since it systematically

failed to pay all wages earned and failed to pay all additional wages in lieu of providing all rest and meal periods.

5. Failure to keep accurate time records and failure to provide accurate wage statements that reflect the actual hours worked and amounts earned.
6. Failure to pay vacation wages, in violation of Labor Code §§ 223.7, 201, 202, 221, 1194, 1197.1 and the Wage Orders.
7. Failure to reimburse business expense, in violation of the Wage Order and Labor Code §2802

The above provisions do not include all of the derivative penalties associated with the above provisions, which are listed throughout the Labor Code. Further facts and theories supporting the alleged violations are included in the enclosed complaint, which is incorporated into this notice.

This letter does not allege violations based solely upon the basis that Defendants failed to properly compensate employees for rest and recovery periods.

This is also a notice pursuant to 2810.3(d) for defendants' civil liability purposes based upon the failure to pay wages as described in the attached complaint.

The aggrieved employees can be contacted through our office: Mallison & Martinez, Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

If no action is taken within 30 days, we will assume that we may pursue this action against the above Defendants' entities and persons and pursuant to §210, 558 and 1197.1 (and other provisions) against Defendants and its agents, managers and supervisors pursuant to Labor Code §2698 *et seq.*

If you have any questions, please do not hesitate to contact me.

Sincerely,

MALLISON & MARTINEZ

A handwritten signature in dark ink, appearing to read 'Stan Mallison', with a stylized, sweeping flourish at the end.

Stan Mallison

Encl.

1 STAN S. MALLISON (Bar No. 184191)
2 HECTOR R. MARTINEZ (Bar No. 206336)
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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CRUZ

ENOCH CRUZ SANTIAGO, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

DUTRA FARMS and PREMIERE
RASPBERRIES, LLC, and DOES 1 through 20,
inclusive,

Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay Minimum Wages
2. Failure to Pay Overtime Wages
3. Failure to Provide Timely and Complete Meal Periods or Pay Additional Wages in Lieu Thereof
4. Failure to Provide Timely and Complete Rest Periods or Pay Additional Wages in Lieu Thereof
5. Failure to Pay Wages of Terminated or Resigned Employees
6. Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions
7. Violation of Unfair Competition Law
8. PAGA - Labor Code § 2699 *et seq.*

DEMAND FOR JURY TRIAL

1 1. Plaintiff Enoch Cruz Santiago ("Plaintiffs" or "Plaintiff") bring this action against
2 Dutra Farms and Premiere Raspberries, LLC and DOES 1-20 (collectively "Defendants"),
3 individually and on behalf of all other similarly situated individuals employed under common
4 circumstances and facts. The allegations made in this Complaint are based on the knowledge of
5 Plaintiff, except those allegations made on information and belief, which are based on the
6 investigation of his counsel.

7
8 **I. NATURE OF THE ACTION**

9 2. This is a wage and hour class action to vindicate the rights afforded employees by
10 California labor law. This action is brought by Plaintiff themselves and on behalf of a Class of
11 similarly situated individuals against Defendants and DOES 1 through 20, inclusive (hereinafter
12 collectively referred to as "Defendants"). Plaintiff's California Private Attorney General Act,
13 Labor Code §§ 2698 *et seq.* ("PAGA") claim is brought as an enforcement action on behalf of the
14 state for penalties and other remedies on behalf of the State of California and current and former
15 employees as expressly permitted by that statute. All PAGA administrative requirements will have
16 been met for this purpose prior to service of this complaint.

17 3. This action revolves around the systematic failure by Defendants to pay California
18 non-exempt employees, including Plaintiff and the Class, in conformance with California law.
19 Defendants Dutra Farms and Premiere Raspberries, LLC (and some Does) have employed Plaintiff
20 and the Class directly or as agents of one another and is referred to herein as "EMPLOYER
21 DEFENDANTS." Plaintiff alleges that Defendants Dutra Farms and Premiere Raspberries, LLC
22 and some Does are "persons" who violated or caused to be violated California Labor Code § 558,
23 § 1197.1, and IWC Wage Orders. As such, Defendants Dutra Farms and Premiere Raspberries,
24 LLC and some Does are liable for penalties and wages which Plaintiff may seek through PAGA for
25 themselves, current and former employees, and the State of California and are sued solely pursuant
26 to PAGA. Some Defendant Does and Defendants Dutra Farms and Premiere Raspberries, LLC are
27 collectively hereinafter referred to as the "PAGA DEFENDANTS."

28 4. The core violations Plaintiff alleges against the EMPLOYER DEFENDANTS are:

1 (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure
2 to provide timely and complete meal periods, and/or provide appropriate compensation in lieu
3 thereof; (4) failure to provide timely, complete, and paid rest periods, and/or provide appropriate
4 compensation in lieu thereof; and (5) failure to reimburse necessary expenses incurred.

5 5. EMPLOYER DEFENDANTS have refused to pay the wages due and owed to
6 Plaintiff and Class members under the express provisions of the California Labor Code, which in
7 turn has resulted in additional Labor Code violations entitling Plaintiff and the Class to prompt
8 payment of wages and penalties. The PAGA DEFENDANTS caused the violations at issue and
9 benefitted financially and/or professionally from these violations.

10 6. As a result of the violations alleged herein, all Defendants are subject to PAGA
11 penalties, which Plaintiff seeks in this lawsuit for himself, EMPLOYER DEFENDANTS' current
12 and former employees, and the State of California. Plaintiff is an aggrieved employees within the
13 meaning of Labor Code §§ 2698 *et seq.* and has complied with the pre-filing requirements of
14 PAGA. The pre-lawsuit notice requirements set forth in Labor Code § 2699.3 will be satisfied by
15 written notice by certified mail to all Defendants and to the Labor and Workforce Development
16 Agency, detailing the Labor Code and IWC Wage Order violations averred herein. The waiting
17 time period will have elapsed prior to service of this complaint.

18 7. Plaintiff, for himself and the Class, also seeks injunctive relief requiring each
19 Defendant to comply with all applicable California labor laws and regulations in the future and
20 preventing the EMPLOYER DEFENDANTS from engaging in and continuing to engage in
21 unlawful and unfair business practices. Plaintiff also seeks declaratory relief enumerating
22 Defendants' violations so that the Defendants and the general public will have clarity and guidance
23 with regards to Defendants' future employment practices.

24 25 **II. JURISDICTION AND VENUE**

26 8. This case is subject to the jurisdiction of this court pursuant to the California Labor
27 Code, California Business and Professions Code, and California Code of Civil Procedure.
28 Employer Defendants are all California Corporations, businesses, or DBA doing acts in

1 Watsonville, California. Employer Defendants are qualified to do business in California and
2 regularly conduct business in Santa Cruz County, California.

3 9. Federal courts may not exercise jurisdiction over this case pursuant to the Class
4 Action Fairness Act of 2005. Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of Title
5 28 of the United States Code) ("CAFA") because, as of the date of the filing and service of this
6 complaint and on information and belief, more than two-thirds of the members of all proposed
7 plaintiff classes in the aggregate, and the primary defendants, are citizens of California, the State in
8 which the action was originally filed. Alternatively, this case is not subject to jurisdiction in
9 federal court pursuant to CAFA because: (a) more than two-thirds of the members of the proposed
10 plaintiff class(es) in the aggregate are citizens of California where this case is originally filed; (b)
11 significant relief is sought from Defendants by members of the plaintiff Class whose alleged
12 conduct forms a significant basis for the claims asserted by the proposed plaintiff class, (c) the
13 Defendants are citizens of California; (d) principal injuries resulting from the alleged conduct or
14 related conduct of Defendants was incurred in California, and (e) on information in belief, during
15 the 3-year period preceding the filing of this class action, no other class action has been filed
16 asserting the same or similar factual allegations against Defendants on behalf of the same or other
17 persons.

18 10. Venue is proper in this County because, pursuant to Code of Civil Procedure § 395,
19 the County of Santa Cruz is the county in which most of the Defendants reside and where the
20 majority of the acts occurred including the underlying policy decisions to intentionally violate and
21 permit the violation of the California Labor Code, and California Business and Professions Code.
22 Plaintiff has worked for Defendants in Santa Cruz County.

23 24 **III. PARTIES**

25 ***Plaintiff***

26 11. Plaintiff Enoch Cruz Santiago is a resident of California. At relevant times herein,
27 he has been employed directly or jointly by Defendants and Employer Does, as an employee on
28 land owned, leased, and/or operated by Defendants in and around Santa Cruz County, California,

1 and has been employed by Defendants as a non-exempt employee. During the relevant time period,
2 Plaintiff Santiago worked for Defendants within the County of Santa Cruz, performing agricultural
3 work at various times during the Class Period through approximately 2015, at piece rate wage rates
4 that varied over his period of employment. Plaintiff Santiago is an aggrieved employee who has
5 been subjected to the violations and unlawful employment practices described herein, and who, as
6 a result, has suffered injury in fact and loss of money and property.

7 12. Plaintiff and the employees whom Plaintiff seeks to represent were regularly
8 subjected to, or had personal knowledge of, the violations described in this Complaint.

9 *Defendant*

10 13. The following allegations as to DEFENDANTS are made on information and belief,
11 and are likely to have evidentiary support after a reasonable opportunity for further investigation or
12 discovery.

13 14. At all times relevant, Dutra Farms ("Dutra Farms"), conducted and conducts
14 business in Santa Cruz County. At all times relevant, Dutra Farms owned, controlled, or operated
15 a business or establishment that employed persons within the meaning of Industrial Welfare
16 Commission Order No. 14, 8 Cal. Code of Regs. § 11140, Industrial Welfare Commission Order
17 No. 13, 8 Cal. Code of Regs. § 11130, and/or Industrial Welfare Commission Order No. 8, 8 Cal.
18 Code of Regs. § 11180, and operated as a direct or joint employer of Class members in this case.
19 During all relevant times alleged herein, Dutra Farms employed Plaintiff, and similarly situated
20 persons as non-exempt employees, and committed in California and in this County the acts and/or
21 caused the violations complained of herein. Dutra Farms may operated as a FLC and joint
22 employer of Plaintiff.

23 15. At all times relevant, Premiere Raspberries, LLC ("Premiere Raspberries"),
24 conducted and conducts business in Santa Cruz County. At all times relevant, Premiere
25 Raspberries owned, controlled, or operated a business or establishment that employed persons
26 within the meaning of Industrial Welfare Commission Order No. 14, 8 Cal. Code of Regs. § 11140,
27 Industrial Welfare Commission Order No. 13, 8 Cal. Code of Regs. § 11130, and/or Industrial
28 Welfare Commission Order No. 8, 8 Cal. Code of Regs. § 11180, and operated as a direct or joint

1 employer of Class members in this case. During all relevant times alleged herein, Dutra Farms
2 employed Plaintiff, and similarly situated persons as non-exempt employees, and committed in
3 California and in this County the acts and/or caused the violations complained of herein. Dutra
4 Farms may operated as a FLC and joint employer of Plaintiff.

5 16. Defendants Larse Farms and some Does are sued as a joint employer of Plaintiff.
6 Plaintiffs will amend this action 30 days after providing notice to Defendant pursuant to California
7 Labor Code to establish liability against Larse Farms pursuant to Labor Code § 2810.3 which
8 provides a statutory obligation for growers to pay owed wages of employees of their FLCs.

9 17. Defendants are joint employers of Plaintiff and the class.

10 18. Plaintiff is informed and believe, and based thereon allege, that each Defendant
11 acted in all respects pertinent to this action as the agent of the other Defendants including Does,
12 carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of
13 each Defendant are legally attributable to the other Defendants. "Defendants" herein means each
14 of the defendants as well as all of them.

15 16 **IV. FACTUAL BACKGROUND**

17 19. The claims of this lawsuit spring from a pattern of employer misconduct and
18 wrongdoing that has characterized the labor system in much of the agricultural industry, where
19 unpaid and improperly paid labor, as alleged herein, are commonplace and regular practices. The
20 Defendants herein include some of the largest growers of seasonal crops. The unlawful practices
21 and policies alleged are widespread and entrenched in the industry. The practices of the industry
22 are uniform, or nearly uniform among many of the major wine grape growers, at least in part due to
23 grower organizations that spread improper employment practices. The following paragraphs detail
24 specific violations of law comprising the wage-related claims applicable to employees that Plaintiff
25 seeks to represent on a class and PAGA basis.

26 20. For at least four years prior to the filing of this action and through to the present,
27 Defendants and their subsidiaries, parents, or affiliate companies have maintained and enforced
28 unlawful labor policies against employees that revolve around Defendants' piece rate system of

1 compensation, their meal and rest break practices, and their record-keeping procedures.

2 21. Under the piece rate policy, Defendants fail to compensate for all "hours worked"
3 (within the meaning of the Wage Orders) and fail to pay overtime premium wages for work
4 performed in the fields. This includes, but is not limited to, regular hours worked that were not
5 compensated at minimum or agreed upon rates, overtime hours worked that were either not
6 compensated, or compensated at rates lower than the applicable overtime premium wage rate
7 and/or without properly calculating the regular rate of pay for purposes of paying overtime,
8 uncompensated or undercompensated time spent on statutory rest breaks, work meetings, and other
9 activities. By their conduct, Defendants make clear that they are intentionally and maliciously
10 subverting California's minimum and overtime wage requirements, resulting in Plaintiff and the
11 Class loss of property that occur as a result of Defendants' payroll policies.

12 22. Under the meal period policies, Defendants fail to provide employees: (a) at least
13 one (1) meal period for shifts greater than five hours and/or two (2) meal periods for shifts greater
14 than ten hours, (b) net thirty minute meal periods, (c) timely meal periods, and/or (d) off-duty meal
15 periods. Further, Defendants' policy is to not pay the premium wages owed to workers for missed
16 and untimely meal periods.

17 23. Under the rest break policies, Defendants fail to provide employees: (a) at least two
18 (2) rest breaks for shifts greater than six hours, and/or three (3) rest breaks for shifts greater than
19 ten hours, (b) net ten minute rest breaks, (c) timely rest breaks, and (d) paid rest breaks. Further,
20 Defendants' policy is to not pay the premium wages owed to workers for missed, untimely and
21 unpaid rest breaks.

22 24. Under the record-keeping policies, Defendants willfully provide inaccurate itemized
23 wage statements that do not reflect all "hours worked," wages earned and applicable pay rates.
24 Defendants also fail to maintain accurate time-keeping records.

25 25. Plaintiff, on behalf of himself and all other non-exempt employees employed by, or
26 formerly employed by Defendants (hereinafter referred to as "Class Members"), brings this action
27 pursuant to California Labor Code §§ 201, 202, 203, 204, 205.5, 214, 216, 218, 218.6, 221, 226,
28 226.7, 512, 1174, 1194, 1194.2, 1197, 1199, and Business & Professions Code §§ 17200 *et seq.* (as

1 well as the derivative penalty provisions pursuant to PAGA) seeking unpaid and underpaid wages,
2 unpaid rest period compensation, statutory penalties, liquidated damages, declaratory, injunctive
3 and other equitable relief, reasonable attorneys' fees and costs of suit, injunctive relief, declaratory
4 relief, restitution, and disgorgement of all profits or benefits retained by Defendants as a result of
5 their failure to comply with the above laws. Plaintiff has followed the procedural requirements
6 detailed in Labor Code § 2698 *et seq.* and, therefore, also seeks civil penalties (including unpaid
7 wages) on behalf of himself, the State of California, and all current and former employees).

8 26. Plaintiff alleges that the Employer Defendants (including some Does), and each of
9 them, are employers with respect to any Plaintiff or Class Members.

10 27. On information and belief, Defendants were on notice of the improprieties alleged
11 herein by their employees, Plaintiff and the Class he seeks to represent, and intentionally refused to
12 rectify their unlawful policies.

13 28. Defendants' failure to compensate non-exempt employees for all "hours worked,"
14 failure to authorize and permit requisite meal and rest periods and paid rest periods, failure to pay
15 premium meal and rest period wages, failure to pay for all hours worked at the regular rate or
16 required overtime premium rate, and failure to pay wages at termination, in addition to the other
17 violations alleged above, during all relevant times herein was willful and deliberate.

18 29. Defendants have made it difficult to account with precision for the unlawfully
19 withheld wages due to Defendants' non-exempt employees, including Plaintiff, during all relevant
20 times herein, because they have not implemented an adequate record-keeping method to record all
21 hours worked and wages earned by their employees as required for non-exempt employees by
22 California Labor Code §§ 226 and 1174(d).

23 30. Defendants have failed to comply with California Labor Code § 226(a) by failing to
24 itemize in wage statements all wages earned and by failing to accurately report total hours worked
25 by Plaintiff and the members of the proposed class. Plaintiff and Class Members are therefore
26 entitled to statutory penalties not to exceed \$4,000 for each employee pursuant to Labor Code
27 § 226(e).

1 **V. CLASS ACTION ALLEGATIONS**

2 28. Plaintiff brings this action on behalf of himself and all others similarly situated as a
3 class action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the
4 following "Class" composed of and defined as follows:

5 All persons who are or have been employed by DEFENDANTS or DOES in
6 the State of California at any time within four (4) years of the filing of the
Initial Complaint in this action.

7 29. Plaintiff reserves the right under Rule 1855(b), California Rules of Court, to amend
8 or modify the class description with greater specificity to further divide into subclasses or to limit
9 to particular issues.

10 30. This action has been brought and may properly be maintained as a class action
11 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
12 community of interest in the litigation and the proposed Class is easily ascertainable.

13 **A. Numerosity**

14 31. The potential members of the Class as defined are so numerous that joinder of all
15 the members of the Class is impracticable. While the precise number of Class Members has not
16 been determined at this time, Plaintiff is informed and believes that Defendants have employed
17 dozens of agricultural and packing shed employees in the State of California and who are, or have
18 been, affected by Defendants' unlawful practices as alleged herein.

19 32. Upon information and belief, Plaintiff alleges that Defendants' employment records
20 would provide information as to the number and location of all Class Members. Joinder of all
21 members of the proposed Class is not practicable.

22 **B. Commonality**

23 33. There are questions of law and fact common to the Classes predominating over any
24 questions affecting only individual Class Members. These common questions of law and fact
25 include, without limitation:

- 26 a. Whether Defendants violated California Labor Code and applicable wage
27 orders by not properly compensating Class members, including Plaintiff, for
28 all hours worked;

- 1 b. Whether Defendants violated California Labor Code and applicable wage
2 orders by compensating Class members, including Plaintiff, at piece rates
3 below the applicable minimum and premium wage rates;
- 4 c. Whether Defendants violated California Labor Code and applicable wage
5 orders by (i) failing to provide Class members, including Plaintiff, timely
6 meal periods of at least thirty (30) minutes per five (5) hours worked, (ii)
7 failing to provide net thirty (30) minute meal periods because of time spent
8 working through meal periods and/or walking to and from the work areas to
9 designated break areas; and (iii) failing to compensate employees an
10 additional hour of pay in lieu of meal periods, in violation of California law
11 and public policy;
- 12 d. Whether Defendants violated California Labor Code and applicable wage
13 orders by (i) failing to provide Class members, including Plaintiff, paid daily
14 rest breaks at the rate of one rest period for shifts between 3.5 and 6 hours,
15 two rest breaks for shifts greater than 6 hours up to 10 hours, three rest
16 breaks for shifts greater than 10 hours up to 14 hours, and so on, (ii) failing
17 to schedule paid rest breaks on either side of the meal break for shifts greater
18 than six hours up to 10 hours, (iii) failing to authorize and permit *paid* rest
19 breaks to employees while working "off the clock", and (iv) failing to
20 compensate employees an additional hour of pay in lieu of rest breaks, in
21 violation of California law and public policy;
- 22 e. Whether Defendants violated California Labor Code and applicable wage
23 orders by failing to indemnify Plaintiff and the Class he seeks to represent
24 for all necessary business expenditures, including mileage and travel
25 expenses incurred while traveling to and from work sites during shifts;
- 26 f. Whether Defendants violated California Labor Code and applicable wage
27 orders by failing to, among other violations, maintain accurate records of
28 employees' earned wages and work periods, properly itemize in wage

statements all hours worked and wages earned, and accurately maintain records pertaining to Plaintiff and the Class he seeks to represent;

- g. Whether Defendants violated California Labor Code and applicable wage orders by failing to pay all earned wages and/or premium wages due and owing at the time that Plaintiff's or any Class member's employment with Defendants terminated;
- h. Whether Defendants violated § 17200 *et seq.* of the California Business and Professions Code by unlawfully deducting wages, or failing to pay wages to non-exempt employees and converting same to Defendants' own use; unlawfully requiring non-exempt employees to work at wage rates below the minimum and premium overtime wage and converting same to Defendants' own use; failing to provide proper meal periods without compensating non-exempt employees one hour's pay for each instance such periods were not provided and converting same to Defendants' own use; failing to provide paid proper rest periods without compensating non-exempt employees one hour's pay for each instance such periods were not provided and converting same to Defendants' own use; failing to pay wages and compensation for denied rest periods due and owing at the time a Class Member's employment with Defendants terminated; and failing to keep accurate records causing injury to employees;
- i. Whether Defendants violated § 17200 *et seq.* of the Business and Professions Code by violating the fundamental public policy underlying the California Labor Code and applicable wage orders;
- j. Whether Plaintiff and the Class Members are entitled to declaratory, injunctive and other equitable relief pursuant to Business and Professions Code § 17200, *et seq.*
- k. Whether Plaintiff and the Class Members are entitled to damages, restitution, statutory penalties, declaratory, injunctive and declaratory relief,

1 attorney's fees and costs, and other relief pursuant to the California Labor
2 Code, the applicable wage orders, and Business and Professions Code
3 § 17200, *et seq.*

4 **C. Typicality**

5 34. The claims of the named Plaintiff are typical of the claims of the Classes. Plaintiff
6 and all members of the Classes sustained injuries and damages arising out of and caused by
7 Defendants' common course of conduct in violation of California laws, regulations, and statutes as
8 alleged herein.

9 **D. Adequacy of Representation**

10 35. Plaintiff will fairly and adequately represent and protect the interests of the
11 members of the Classes. Counsel who represent Plaintiff are competent and experienced in
12 litigating large employment class actions.

13 **E. Superiority of Class Action**

14 36. A class action is superior to other available means for the fair and efficient
15 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
16 questions of law and fact common to the Class predominate over any questions affecting only
17 individual members of the Classes. Each member of the proposed Classes has been damaged and
18 is entitled to recovery by reason of Defendants' unlawful policy and/or practice of failing to
19 compensate Class Members for all wages earned and engaging in the unlawful practices herein
20 complained of, and denying Class Members rest and meal periods without legal compensation.

21 37. Class action treatment will allow those similarly situated persons to litigate their
22 claims in the manner that is most efficient and economical for the parties and the judicial system.
23 It is unlikely that individual class members have any interest in individually controlling separate
24 actions in this case. Class members' lack of knowledge of the legal system and limited economic
25 resources would deprive most class members of the practical opportunity to pursue their claims
26 were this class action not certified.

27 38. Plaintiff is unaware of any difficulties that are likely to be encountered in the
28 management of this action that would preclude its maintenance as a class action. The benefits of

1 maintaining this action on a class basis far outweigh any administrative burden in managing the
2 class action. Conducting the case as a class action would be far less burdensome than prosecuting
3 numerous individual actions.

4 **VI. CLAIMS FOR RELIEF**

5 **FIRST CLAIM FOR RELIEF**

6 **FAILURE TO PAY MINIMUM WAGES**
7 **(CAL. LABOR CODE §§1194, 1194.2, 510, 1197, WAGE ORDERS 8, 13, AND 14)**

8 **(ALL PLAINTIFF AGAINST ALL DEFENDANTS)**

9 39. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

10 40. California Labor Code §1197, entitled "Pay of Less Than Minimum Wage," states:

11 The minimum wage for employees fixed by the commission is the minimum
12 wage to be paid to employees, and the payment of a less wage than the
minimum so fixed is unlawful.

13 41. The applicable minimum wage fixed by the commission for agricultural workers
14 (Wage Orders 8, 13 & 14) was set at \$8.00 per hour for all hours worked effective January 1, 2008,
15 but has been amended. The minimum wage has been raised to \$9.00 per hour, effective July 1,
16 2014 and will rise to \$10.00 on January 1, 2016.

17 42. The Defendants failed to pay minimum wages for "all hours worked." In particular,
18 Plaintiff and the Class were required to work "off the clock" by, for example, arriving early for set
19 up, driving to and from work sites during shifts, and work at hourly wage or piece rates below
20 minimum wage, or uncompensated work while doing piece rate work.

21 43. As a result of Defendants' violations of the minimum wage, by failing to record and
22 pay minimum wage for all hours worked, Defendants violated California Labor Code § 226(a),
23 inaccurately stating gross wages earned, total hours work, deductions, net wages and other issues
24 as described above.

25 44. Defendants have the ability to pay minimum wages for all time worked but have
26 willfully refused to pay such wages, intending to secure instead a discount upon their indebtedness
27 to Plaintiffs and the Class for all hours worked, and intending to annoy harass, oppress, hinder
28 delay or defraud Plaintiffs and the Class, in violation of California Labor Code § 226.6.

1 45. California Labor Code § 226.6 states:

2 Any employer who knowingly and intentionally violates the provisions of
3 Section 226 or 226.2, or any officer, agent, employee, fiduciary, or other
4 person who has the control, receipt, custody, or disposal of, or pays, the
5 wages due any employee, and who knowingly and intentionally participates
6 or aids in the violation of any provision of Section 226 or 226.2 is guilty of a
7 misdemeanor and, upon conviction thereof, shall be fined not more than one
8 thousand dollars (\$1,000) or be imprisoned not to exceed one year, or both,
9 at the discretion of the court. That fine or imprisonment, or both, shall be in
10 addition to any other penalty provided by law.

11 46. Defendants' violation of § 226 also constitutes a misdemeanor, pursuant to §226.6,
12 a predicate violation of California Business & Profession Code §§ 17200 *et seq.*, and a predicate
13 violation of Labor Code §2699.

14 47. The Minimum Wage provisions of California Labor Code are enforceable by
15 private civil action pursuant to California Labor Code § 1194(a), which states:

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

22 As such, Plaintiff and the Class may bring this action for minimum wages, interest, costs of suit
23 and attorney's fees pursuant to California Labor Code § 1194(a).

24 48. As described in California Labor Code § 1194.2, any such action incorporates the
25 applicable wage order of the California Labor Commission. California Labor Code § 1194.2
26 states:

27 In any action under Section 1194 ... to recover wages because of the
28 payment of a wage less than the minimum wages fixed by an order of the
commission, an employee shall be entitled to recover liquidated damages in
an amount equal to the wages unlawfully unpaid and interest thereon.

49. As described herein, this is an action under California Labor Code § 1194 to recover
wages on account of Defendants' failure to pay minimum wages as described in California Labor
Code §§ 1197, 1194(a), 1194.2 and any applicable wage orders, including IWC Orders 8, 13, and
14. Therefore, Plaintiff and the Class are also entitled to recover liquidated damages in an amount
equal to the wages unlawfully unpaid and interest thereon.

50. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

1 **SECOND CLAIM FOR RELIEF**

2 **FAILURE TO PAY OVERTIME WAGES**
3 **(CAL. LABOR CODE §§510, 1194, 1194.2, WAGE ORDERS 8, 13, AND 14)**

4 (ALL PLAINTIFF AGAINST ALL DEFENDANTS)

5 51. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

6 52. California Labor Code § 510 states:

7 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
8 one workday and any work in excess of 40 hours in any one work week and the first
9 eight hours worked on the seventh day of work in any one workweek shall be
10 compensated at the rate of no less than one and one-half times the regular rate of
11 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.

12 The identical provision is found in the applicable IWC Wage Orders 8 and 13, which are
13 authorized under California Labor Code § 1185.

14 53. IWC Wage Order 14, authorized under California Labor Code § 1185, establishes
15 for agricultural workers the ten (10) hour workday and sixty (60) hour work week, and provides
16 that work in excess of ten (10) hours in one workday or sixty (60) hours in one work week is to be
17 compensated at one and one-half (1½) times the employees' regular rate of pay.

18 54. California Labor Code § 500 defines, "workday" and "day" to mean any
19 consecutive 24 hour period commencing at the same time each calendar day, and defines
20 "workweek" and "week" to mean "any seven consecutive days starting with the same calendar day
21 each week."

22 55. As described herein, Defendants violated California Labor Code § 510 and IWC
23 Wage Orders by failing to pay agricultural workers who were required to work more than 10 hours
24 in one workday or 60 hours in one work week overtime wages. Defendants also violated the
25 California Labor Code and IWC Wage Orders by compensating Plaintiff and the Class at rates
26 lower than the applicable overtime premium wage rate and/or without properly calculating the
27 regular rate of pay for purposes of paying overtime to piece rate employees.

28 56. As described herein, this is an action under California Labor Code §1194 to recover

1 wages on account of Defendants' failure to pay overtime wages as described in California Labor
2 Code §§ 510, 1194(a), 1194.2 and any applicable wage orders, including IWC Orders 8, 13, and
3 14. Therefore, Plaintiff and the Class are also entitled to recover liquidated damages in an amount
4 equal to the wages unlawfully unpaid and interest thereon, plus reasonable attorneys' fees and
5 costs of suit.

6 57. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

7 **THIRD CLAIM FOR RELIEF**

8 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**
9 **(CAL. LABOR CODE §§226.7, 512, WAGE ORDERS 8, 13, AND 14)**

10 (ALL PLAINTIFF AGAINST ALL DEFENDANTS)

11 58. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

12 59. Plaintiff alleges that the Class Members were not provided timely, full statutory
13 thirty (30) minute meal periods while in the employ of Defendants.

14 60. California Labor Code § 226.7 states:

15 (a) No employer shall require any employee to work during any meal or rest period
16 mandated by an applicable order of the Industrial Welfare Commission.

17 (b) If an employer fails to provide an employee a meal period or rest period in
18 accordance with an applicable order of the Industrial Welfare Commission, the
19 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.

20 61. The applicable IWC Wage Orders state in regard to meal breaks:

21 (A) No employer shall employ any person for a work period of more than five (5)
22 hours without a meal period of not less than 30 minutes, except that when a work
23 period of not more than six (6) hours will complete the day's work the meal period
24 may be waived by mutual consent of the employer and employee. Unless the
25 employee is relieved of all duty during a 30-minute meal period, the meal period
26 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. The written agreement shall
state that the employee may, in writing, revoke the agreement at any time.

27 (B) If an employer fails to provide an employee a meal period in accordance with
28 the applicable provisions of this Order, the employer shall pay the employee one (1)

1 hour of pay at the employee's regular rate of compensation for each workday that
2 the meal period is not provided.

3 A similar provision is contained in Labor Code § 512.

4 62. Employees are entitled to at least one meal period for shifts between 5 and 10 hours,
5 and two meal periods for shifts greater than 10 hours. For normal shifts the first meal period must
6 occur before the fifth (5th) hour, and the second meal period before the tenth (10th) hour, unless
7 other factors render such schedule impracticable.

8 63. Defendants violated the applicable Wage Order and California Labor Code § 226.7
9 by failing to authorize and permit the appropriate number of meal periods, failing to schedule meal
10 periods timely, failing to authorize and permit net thirty (30) minute meal periods, and failing to
11 pay additional meal period wages. On information and belief, it was not impracticable for
12 Defendants to schedule meal periods appropriately.

13 64. On information and belief, Plaintiff and the Class Members he seeks to represent
14 did not voluntarily or willfully waive meal periods. Any express or implied waivers obtained from
15 Plaintiff and/or Class Members were not willfully obtained, were not voluntarily agreed to, were a
16 condition of employment, or part of a contract of an unlawful adhesion. On information and belief,
17 during the meal and rest period liability period, Defendants did not permit or authorize Plaintiff
18 and Class Members to take meal periods.

19 65. By failing to keep adequate time records required by §§ 226(a) and 1174(d) of the
20 Labor Code, Defendants have injured Plaintiff and Class Members and made it difficult to
21 calculate the unpaid meal period compensation due Plaintiff and Class Members

22 66. As a result of the unlawful acts of Defendants' actions, Plaintiff and the Class he
23 seek to represent have been deprived of premium wages in amounts to be determined at trial, and
24 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
25 costs, under Labor Code §§ 203, 226, 226.7, and 1194.

26 67. WHEREFORE, Plaintiff and the Class request relief as described herein and below.
27
28

FOURTH CLAIM FOR RELIEF

**FAILURE TO PROVIDE PROPER TIMELY PAID REST PERIODS OR
COMPENSATION IN LIEU THEREOF**

(CAL. LABOR CODE §§226.7, 512, WAGE ORDERS 8, 13, AND 14)

(ALL PLAINTIFF AGAINST ALL DEFENDANTS)

68. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

69. Plaintiff alleges that the Class Members were not provided full statutory ten minute rest periods while in the employ of Defendants.

70. California Labor Code § 226.7 states:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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.

71. The applicable IWC Wage Orders state in regard to rest breaks:

(A) 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 (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

A similar provision is contained in Labor Code § 512.

72. Employees are entitled to at least one rest break for shifts from 3.5 to 6 hours, two rest breaks for shifts greater than 6 hours up to 10 hours, and three rest breaks for shifts greater than 10 hours. For normal shifts the first rest break must occur before the meal break and the second rest break after the meal break, unless other factors render such schedule impracticable.

73. Defendants violated the applicable Wage Order and California Labor Code § 226.7

1 by failing to authorize and permit the appropriate number of rest breaks, failing to provide net ten
2 minute rest breaks, failing to schedule rest breaks timely, failing to authorize and permit paid rest
3 breaks and failing to pay additional rest break wages. On information and belief, it was not
4 impracticable for Defendants to schedule rest breaks appropriately.

5 74. On information and belief, Plaintiff and the Class Members they seek to represent
6 did not voluntarily or willfully waive rest periods. Any express or implied waivers obtained from
7 Plaintiff and/or Class Members were not willfully obtained, were not voluntarily agreed to, were a
8 condition of employment, or part of a contract of an unlawful adhesion. On information and belief,
9 during the meal and rest period liability period, Defendants did not permit or authorize Plaintiff
10 and Class Members to take proper timely paid rest periods.

11 75. By failing to keep adequate time records required by §§ 226(a) and 1174(d) of the
12 Labor Code, Defendants have injured Plaintiffs and Class Members and made it difficult to
13 calculate the unpaid rest period compensation due Plaintiffs and Class Members.

14 76. As a result of the unlawful acts of Defendants' actions, Plaintiffs and the Class they
15 seek to represent have been deprived of premium wages in amounts to be determined at trial, and
16 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
17 costs, under Labor Code §§ 203, 226, 226.7, and 1194.

18 77. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

19 **FIFTH CLAIM FOR RELIEF**

20 **FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION**
21 **(CAL. LABOR CODE §§201, 202, 203)**

22 **(ALL PLAINTIFF AGAINST ALL DEFENDANTS)**

23 78. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

24 79. California Labor Code Section 201 states:

25 (a) If an employer discharges an employee, the wages earned and unpaid at the time
26 of discharge are due and payable immediately...

27 80. California Labor Code Section 202(a) states:

28 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

1 thereafter, unless the employee has given 72 hours previous notice of his or her
2 intention to quit, in which case the employee is entitled to his or her wages at the
time of quitting. . . .

3 81. As described above, Defendants failed to timely pay Plaintiff and the Class
4 Members all of their wages due for work performed and this failure continued through the time in
5 which Plaintiffs and Class Members quit or were discharged from their employment with
6 Defendants. As a result, Defendants have violated California Labor Codes §§ 201 and 202.

7 82. California Labor Code § 203 states:

8 If an employer willfully fails to pay, without abatement or reduction, in accordance
9 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
10 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
11 commenced; but the wages shall not continue for more than 30 days. An employee
who secretes or absents himself or herself to avoid payment to him or her, or who
12 refuses to receive the payment when fully tendered to him or her, including any
penalty then accrued under this section, is not entitled to any benefit under this
13 section for the time during which he or she so avoids payment.

14 Suit may be filed for these penalties at any time before the expiration of the statute
15 of limitations on an action for the wages from which the penalties arise.

16 83. The statute of limitations for an action for the wages at issue is four years pursuant
17 to California Business and Professions Code § 17200. Defendants violated California Labor Code
18 §§ 201 and 202 by failing to pay employees who quit or were discharged all of the wages due
19 pursuant to the timelines provided in those sections. Defendants willfully failed to pay all wages
20 due as the failure to pay was not inadvertent or accidental. As a result, Plaintiff is entitled to thirty
21 (30) days' wages including overtime.

22 84. Plaintiffs and the Class they seek to represent are entitled to compensation for all
23 forms of wages earned, including, but not limited to, compensation for unprovided rest periods and
24 unprovided meal periods, and compensation for work done "off the clock" and/or at hourly rates
25 below the minimum wage, and other owed wages but to date have not received such compensation
26 therefore entitling them to Labor Code § 203 penalties.

27 85. More than thirty (30) days have passed since affected Class Members have left
28 Defendants' employ, and on information and belief, have not received payment pursuant to Labor

Code § 203. As a consequence of Defendants' willful conduct in not paying all earned wages, Plaintiffs and certain Class Members who are no longer employed by Defendants are entitled to thirty (30) days' wages as a penalty under Labor Code § 203 for failure to pay legal wages, together with interest thereon and attorneys' fees and costs.

86. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

SIXTH CLAIM FOR RELIEF

**KNOWING AND INTENTIONAL FAILURE TO COMPLY
WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS
(CAL. LABOR CODE §§226(B), 1174, 1175)**

(ALL PLAINTIFF AGAINST ALL DEFENDANTS)

87. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

88. California Labor Code Section 226(a) states:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing

(1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis . . . (5) net wages earned, . . .

89. Defendants failed to provide "accurate itemized statements" to employees because the wage statements:

- a. Falsely understated Plaintiffs' and the Class Members' gross and net wages earned by failing to pay for all hours worked and for premium wages;
- b. Falsely understated the total hours worked by Plaintiffs and the Class Members by ignoring the total of hours actually worked;
- c. Falsely understated Plaintiffs' and Class Members' "number of hours worked at each hourly rate";
- d. Failed to provide accurate applicable piece rate information;
- e. Failed to provide correct employer name and information.

90. California Labor Code §§ 226(e) and (g) provide for the remedy for the violations described above:

1 (e) An employee suffering injury as a result of a knowing and intentional failure by
2 an employer to comply with subdivision (a) is entitled to recover the greater of all
3 actual damages or fifty dollars (\$50) for the initial pay period in which a violation
4 occurs and one hundred dollars (\$100) per employee for each violation in a
subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
(\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

5 (g) An employee may also bring an action for injunctive relief to ensure compliance
6 with this section, and is entitled to an award of costs and reasonable attorney's fees.

7 91. In addition, Section 1174(d) of the California Labor Code, and Section 7 of the
8 applicable Wage Orders, require Defendants to maintain and preserve, in a centralized location,
9 among other items, records showing the names and addresses of all employees employed, payroll
10 records showing the hours worked daily by and the wages paid to its employees. Defendants have
11 created a uniform practice of knowingly and intentionally failing to fully comply with Labor Code
12 § 1174. Defendants', and each of their, failure to comply with Labor Code § 1174 is unlawful
13 pursuant to Labor Code § 1175. When an employer fails to keep such records, employees may
14 establish the hours worked solely by their testimony and the burden of overcoming such testimony
15 shifts to the employer. *Hernandez v. Mendoza*, 199 Cal. App. 3d 721 (1988).

16 92. By failing to keep adequate time records required by sections 226 and 1174 (d) of
17 the Labor Code, Defendants have injured Plaintiffs and Class Members and made it difficult to
18 calculate the unpaid rest and meal period compensation due Plaintiffs and Class Members and are
19 entitled up to \$4,000.00 per Class Member.

20 93. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

21 **SEVENTH CLAIM FOR RELIEF**

22 **VIOLATION OF UNFAIR COMPETITION LAW**
23 **(CAL. BUS. & PROF. CODE §§17200 ET SEQ.)**

24 **(ALL PLAINTIFF AGAINST ALL DEFENDANTS)**

25 94. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

26 95. As described above, Defendants have violated the following California laws and all
27 others referred to implicitly or expressly in this complaint:

28 a. violation of California Labor Code § 201 (relating to the failure to pay wages upon

- 1 discharge);
- 2 b. violation of California Labor Code § 202 (relating to the failure to pay wages upon
- 3 quitting);
- 4 c. violation of California Labor Code § 203 (relating to the failure to pay wages upon
- 5 termination of employment);
- 6 d. violation of California Labor Code § 205.5 (relating to the failure to pay all wages
- 7 owing twice during each calendar month);
- 8 e. violation of California Labor Code § 206 (relating to the failure to pay uncontested
- 9 wages);
- 10 f. violation of California Labor Code § 226 (relating to providing correct wage
- 11 statements and keeping correct records);
- 12 g. violation of California Labor Code § 226.7 (relating to proper compliance with rest
- 13 and meal period requirements and the failure to pay premium wages when the rest
- 14 and meal break requirements are not met);
- 15 h. violation of California Labor Code § 510 (relating to the failure to compensate at
- 16 the regular rate "all hours worked," and at the rate of no less than one and one-half
- 17 times the regular rate of pay for all work in excess of ten hours in one workday and
- 18 any work in excess of 60 hours in any workweek);
- 19 i. violation of California Labor Code § 1194 (relating to failure to pay minimum
- 20 and/or overtime wages for all hours worked);
- 21 j. violation of California Labor Code § 1194.2 (relating to liquidated damages for
- 22 failure to pay minimum wages for all hour worked);
- 23 k. violation of California Labor Code § 1197 (relating to failure to pay at least the
- 24 minimum wage for all hours worked);

25 96. Defendants' activities also constitute unfair business practices in violation of Cal.

26 Bus. & Prof. Code §§ 17200 *et seq.*, because Defendant's practices violate the above noted laws,

27 and/or violate an established public policy and/or the practice is immoral, unethical, oppressive,

28 unscrupulous and substantially injurious to Plaintiff, the public, and the Classes.

1 97. Plaintiff and Class Members are entitled to injunctive and other equitable relief
2 against such unlawful practices in order to prevent future damage, for which there is no adequate
3 remedy at law, and to avoid a multiplicity of lawsuits.

4 98. As a result of their unlawful acts, Defendants have reaped and continue to reap
5 unfair benefits and unlawful profits at the expense of Plaintiff, and the Classes they seek to
6 represent. Defendants should be enjoined from this activity and made to disgorge these ill-gotten
7 gains and restore to Plaintiff and the members of the Plaintiff Class the wrongfully withheld wages
8 pursuant to Business and Professions Code § 17203. Plaintiff is informed and believe, and thereon
9 allege, that Defendants are unjustly enriched through their requiring employees to suffer
10 Defendants' failure to pay legal wages, and/or other compensation for untimely and/or incomplete
11 meal periods, and compensation for unprovided, untimely, and/or unpaid rest periods to Plaintiff
12 and members of the Plaintiff Class. Plaintiff is informed and believe, and thereon allege, that
13 Plaintiff and members of the Plaintiff Class are prejudiced by Defendants' unfair trade practices.

14 99. As a direct and proximate result of the unfair business practices of Defendants, and
15 each of them, Plaintiff, individually and on behalf of all employees similarly situated, are entitled
16 to equitable and injunctive relief, including full restitution and/or disgorgement of all wages which
17 have been unlawfully withheld from Plaintiff and Class Members as a result of the business acts
18 and practices described herein and enjoining Defendants to cease and desist from engaging in the
19 practices described herein.

20 100. The unlawful conduct alleged herein is continuing, and there is no indication that
21 Defendants will not continue such activity into the future. Plaintiff allege that if Defendants are
22 not enjoined from the conduct set forth in this Complaint, they will continue to unlawfully require
23 Defendants' non-exempt employees to work "off the clock" without compensation, will continue
24 to require non-exempt employees to work during meal periods, will continue to fail to provide
25 proper paid rest periods or provide appropriate compensation in lieu thereof, and will continue to
26 fail to pay and to avoid paying appropriate taxes, insurance, and unemployment withholdings.

27 101. Plaintiff further request that the Court issue a preliminary and permanent injunction
28 prohibiting Defendants from requiring Plaintiff and the Classes they seek to represent to work "off

1 the clock" without compensation, prohibiting other wrongful conduct which is the subject of this
2 Complaint and which may later be discovered in the course of litigation, enjoining Defendants
3 from forbidding employees to leave the workplace during meal periods, and from continuing to fail
4 to provide rest periods and meal periods or provide appropriate compensation in lieu thereof.

5 102. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

6 **NINTH CLAIM FOR RELIEF**

7 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
8 **(CAL. LABOR CODE §§2698 *ET SEQ.*)**

9 (ALL PLAINTIFF AGAINST ALL DEFENDANTS)

10 103. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

11 104. Plaintiff brings this claim for themselves and other current and former employees,
12 as expressly authorized by the California Private Attorneys General Act of 2004, Labor Code
13 §§ 2699 *et seq.* ("PAGA"). PAGA is an enforcement action that empowers an aggrieved employee
14 to seek penalties on behalf of himself, current and former employees and the State, without the
15 need to certify a class. For purposes of this claim only, therefore, Plaintiff brings this claim for
16 himself and other current and former employees and need not comply with Class Action
17 Certification.

18 105. Plaintiff is an aggrieved employee as defined in Labor Code §2699(a). He brings
19 this cause on behalf of themselves and other current or former aggrieved employees affected by the
20 labor law violations alleged in this Complaint.

21 106. The pre-lawsuit notice requirements set forth in Labor Code § 2699.3 have been
22 initiated by written notice by certified mail to all Defendants and to the Labor and Workforce
23 Development Agency, detailing the Labor Code and IWC Wage Order violations averred herein.
24 The waiting requirements will be completed prior to service of the complaint.

25 107. Plaintiff seeks civil penalties as provided under applicable Labor Code sections for
26 violations of the Labor Code alleged herein pursuant to Labor Code § 2699(a). To the extent that
27 any violation alleged herein does not carry a penalty, Plaintiff seeks civil penalties pursuant to
28 Labor Code § 2699(f) for Plaintiff, other current or former employees and the State for each pay

1 period in which he or she was aggrieved, in the amounts established by Labor Code § 2699.

2 108. Labor Code § 2699(f) provides:

3 For all provisions of this code except those for which a civil penalty is
4 specifically provided, there is established a civil penalty for a violation of
5 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
6 the person employs one or more employees, the civil penalty is one hundred
dollars (\$100) for each aggrieved employee per pay period for the initial
violation and two hundred dollars (\$200) for each aggrieved employee per
pay period for each subsequent violation.

7 109. Plaintiffs seek civil penalties due from all Defendants on behalf of themselves, other
8 aggrieved employees and the State, as provided by Labor Code § 2699(i), including but not limited
9 to, penalties and unpaid wages due pursuant to Labor Code § 558 and § 1197.1 as a result of
10 DEFENDANTS' violation of the provisions of the Labor Code and Wage Orders 8.

11 110. Defendants are liable as employers or persons acting on behalf of the employer(s)
12 pursuant to Labor Code § 558. Each Defendant, including PAGA Defendants, created, authorized,
13 implemented and/or enforced the practices that violate the law and/or caused the violations
14 complained of herein. Defendants are therefore liable for penalties and wages pursuant to Labor
15 Code § 558.

16 111. All Defendants are liable to Plaintiff and "other current or former employees and
17 the state" for the civil penalties arising from the violations alleged in this Complaint. Plaintiffs are
18 also entitled to an award of attorneys' fees and costs as set forth below.

19 112. Most of the predicate act violations which serve as the basis for this PAGA claim
20 (minimum wage and overtime violations, rest and meal period violations, reporting time violations,
21 and failure to compensate for all "hours worked") relate to the non-payment of wages or violations
22 of the IWC Wage Orders that were posted at the worksite. As such, these claims also constitute
23 predicate violations of the payment of wages when due and "working arrangement" provisions of
24 AWPAs.

25 113. Plaintiffs are aggrieved by Defendants labor and payroll practices that:

- 26 a. fail to compensate for all "hours worked";
27 b. fail to compensate minimum and premium wages;
28 c. fail to provide timely and/or complete meal breaks, or premium wages in lieu

- 1 thereof;
- 2 d. fail to provide timely and/or complete rest breaks, and/or paid rest breaks, or
- 3 premium wages in lieu thereof;
- 4 e. fail to provide accurate wage statements or to maintain accurate time and payroll
- 5 records;
- 6 f. fail to pay all wages due at termination or promptly following resignation;

7 114. Plaintiffs, on behalf of themselves and similarly situated employees and former

8 employees of Defendants, request relief as described below.

9 115. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as

10 described herein and below.

11

12 **VII. PRAYER**

13 WHEREFORE, Plaintiff and the Class pray for judgment as follows:

- 14 1. That the Court determine that this action may be maintained as a class action or
- 15 actions;
- 16 2. For compensatory damages including wages in an amount according to proof with
- 17 interest thereon;
- 18 3. For economic and/or special damages in an amount according to proof with interest
- 19 thereon;
- 20 4. For a declaratory judgment that each of the Defendants violated the Plaintiffs' and
- 21 Class Members' rights under the California Labor Code, and applicable IWC Wage Orders as set
- 22 forth in the preceding paragraphs;
- 23 5. Award each Plaintiff and proposed Class Member statutory damages;
- 24 6. That each of the Defendants be found to have engaged in unfair competition in
- 25 violation of California Business and Professions Code § 17200 *et seq.*;
- 26 7. That each of the Defendants be ordered and enjoined to make restitution to the Class
- 27 due to their unfair competition, including disgorgement of their wrongfully-obtained revenues,
- 28 earnings, profits, compensation, and benefits, pursuant to California Business and Professions

1 Code §§ 17203 and 17204;

2 8. That each of the Defendants be enjoined from continuing the unlawful or unfair
3 competition in violation of § 17200 as alleged herein;

4 9. For declaratory relief for Defendants' violation of the California Labor Code and
5 California Business and Professions Code;

6 10. That Defendants be enjoined from further acts of restraint of trade or unfair
7 competition;

8 11. For premium wages pursuant to Labor Code §§ 226, 226.7 and 510;

9 12. For unpaid wages pursuant to California Labor Code § 1194 and liquidated damages
10 pursuant to Labor Code §1194.2;

11 13. For an order imposing all statutory and/or civil penalties provided by law, including
12 but not limited to, penalties under Labor Code §§ 203, 210, 225.5, 226, 226.3, 226.7, 256, 512,
13 558, 1174.5, 1194, 1194.2, 1197.1, 2699(a) and 2699(f) relating to all facts alleged in the
14 complaint;

15 14. An award to Plaintiffs and the Class Members of reasonable attorneys' fees, costs,
16 and interest thereon pursuant to Code of Civil Procedure § 1021.5, Labor Code §§218.5, 218.6,
17 226, 1194, 2699(g), and/or other applicable law; and

18 15. For penalties and all available relief available under the PAGA statute, Cal. Labor
19 Code §§ 2698 *et seq.*;

20 16. For costs of suit and attorneys fees pursuant to PAGA;

21 17. For penalties and all available relief under Labor Code §558;

22 18. For actual, incidental, and consequential damages for breach of contract;

23 19. For such other and further relief as the Court deems just and proper.

24 20. Injunctive relief;

25 21. Interest pursuant to California Labor Code §218.6
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27 **VIII. DEMAND FOR JURY TRIAL**

28 Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

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Dated: September 30, 2015

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