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Superior Court of California,
County of Monterey
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

GUADALUPE HERNANDEZ, on behalf of)
himself, and all others similarly situated, and all)
aggrieved employees)

Plaintiff,

v.

AUTOMATED HARVESTING, LLC; and)
DOES 1 through 50, inclusive,)

Defendants.)

Case No: 22CV002717

CLASS & REPRESENTATIVE ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION**

COMPLAINT FOR:

**1. UNFAIR BUSINESS PRACTICES;
2. VIOLATIONS OF THE LABOR CODE;
3. PENALTIES; and
4. ATTORNEYS' FEES.**

DEMAND FOR JURY TRIAL

1 Plaintiff Guadalupe Hernandez on behalf of himself and all others similarly situated, and
2 all aggrieved employees, complains against Defendants Automated Harvesting, LLC, and Does 1
3 through 50 (all referred to collectively as “Defendants” or “AUTOMATED HARVESTING”) as
4 follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has subject matter jurisdiction over Plaintiff’s claims, based on, among
7 other statutes, California Business & Professions Code §§ 17200, *et seq.*, and California Labor
8 Code §§ 201-203, 204b, 226, 510, 1194, 1198, and 1199. In particular, Plaintiff has complied with
9 all California Labor Code § 2699.3 requirements for commencing a civil action under the California
10 Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* (“PAGA”).

11 2. This Court has personal jurisdiction over the parties because, at all relevant times,
12 Plaintiff was a California resident who worked in California for Defendants and Defendants
13 systematically and continuously have conducted business in the State of California.

14 3. Venue is proper in this Court under California Code of Civil Procedure § 395.5
15 because Defendants’ principal place of business listed on its most recent statement of information
16 filed with the Secretary of State is located in Monterey County at 20520 Spence Road, Salinas,
17 California 93908.

18 **II. PARTIES AND BACKGROUND**

19 4. Plaintiff Guadalupe Hernandez is an adult who worked for Defendants as a non-
20 exempt hourly employee. He worked for Defendants as an hourly lettuce cutter from approximately
21 April 2021 through November 2021 in Salinas, California.

22 5. Defendant Automated Harvesting, LLC is a Delaware limited liability company
23 doing business throughout California and is a “person” as defined by California Labor Code § 18
24 and California Business and Professions Code § 17201. In addition, it is an “employer” as that
25 term is used in the California Labor Code and in the California Industrial Welfare Commission’s
26 Orders regulating wages, hours, and working conditions.

27 6. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1
28 through 50, inclusive, and therefore sues those Defendants by those fictitious names. Plaintiff will

1 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is
2 informed and believes and on that ground alleges that each of the fictitiously-named Defendants is
3 responsible in some manner for the occurrences alleged and that Plaintiff's damages and other
4 losses as alleged are proximately caused by those occurrences.

5 7. Plaintiff brings this action on behalf of a proposed state-wide class of hourly non-
6 exempt employees employed in agricultural occupations by AUTOMATED HARVESTING in
7 California to challenge Defendants' (a) policy and practice of failing to pay overtime for all
8 applicable hours worked and failing to pay overtime at the proper rate; (b) policy and practice of
9 violating California Labor Code § 226 by failing to provide accurate, itemized wage statements;
10 and (c) policy and practice of violating California Labor Code §§ 201-203 by failing to pay former
11 employees all wages due and owing at the time of discharge or voluntary quit.

12 8. Plaintiff brings this action on behalf of himself and a proposed class of all hourly
13 non-exempt workers employed in agricultural occupations by AUTOMATED HARVESTING
14 within the State of California at any time during the applicable limitations period preceding the
15 original filing of this Complaint up through the present and until compliance with the law. Plaintiff
16 seeks recovery of all allowable compensation and other sums for the violations described above,
17 including unpaid overtime, restitution and restoration of sums owed and property unlawfully
18 withheld, statutory penalties, interest, attorneys' fees, and costs.

19 **III. FACTUAL ALLEGATIONS**

20 9. AUTOMATED HARVESTING provides harvesting services at locations
21 throughout the State of California, including but not limited to Salinas, California.

22 10. At all relevant times, Plaintiff was employed by AUTOMATED HARVESTING as
23 an hourly non-exempt employee in an on-site construction occupation as defined by § 2(D) of IWC
24 Wage Order 14-2001. During his employment with AUTOMATED HARVESTING, Plaintiff
25 worked a forty-hour workweek over six days, however he often worked more, including overtime.

26 11. Labor Code §§ 510 and 1194 and IWC Wage Order 14-2001 requires employers to
27 pay overtime to their employees. Pursuant to IWC Wage Order 14-2001 § 3(A)(2), employers with
28 more than 25 employees:

1 (a) Starting January 1, 2019, an employee shall not be employed more than nine
2 and one-half (9 and 1/2) hours per workday or fifty-five (55) hours per
3 workweek unless the employee receives one and one-half (1 and 1/2) times
4 such employee's regular rate of pay for all hours worked over nine and one-
5 half (9 and 1/2) hours in any one workday or more than fifty-five (55) hours
6 in any one workweek.

7 (b) Starting January 1, 2020, an employee shall not be employed more than nine
8 (9) hours per workday or fifty (50) hours per workweek unless the employee
9 receives one and one-half (1 and 1/2) times such employee's regular rate of
10 pay for all hours worked over nine (9) hours in any one workday or more
11 than fifty (50) hours in any one workweek.

12 (c) Starting January 1, 2021, an employee shall not be employed more than
13 eight and one-half (8 and 1/2) hours per workday or forty-five (45) hours
14 per workweek unless the employee receives one and one-half (1 and 1/2)
15 times such employee's regular rate of pay for all hours worked over eight
16 and one-half (8 and 1/2) hours in any one workday or more than forty-five
17 (45) hours in any one workweek.

18 (d) Starting January 1, 2022, an employee shall not be employed more than
19 eight (8) hours per workday or work in excess of forty (40) hours per
20 workweek unless the employee receives one and one-half (1 and 1/2) times
21 such employee's regular rate of pay for all hours worked over eight (8)
22 hours in any workday or more than forty (40) hours in any workweek and
23 double the employee's regular rate of pay for all hours worked over twelve
24 (12) hours in any one workday.

25 12. Plaintiff alleges that Defendant employed over 25 people at all times relevant to this
26 action and that Defendants had a policy and practice of failing to pay Plaintiff and other putative
27 class members overtime as required by IWC Wage Order 14-2001, § 3(A)(2). A review of
28 Plaintiff's wage statements shows that he was not always paid overtime for hours worked over eight

1 and a half in a day in 2021. Further, Plaintiff alleges that Defendants had a policy and practice of
2 failing to pay Plaintiff and other putative class members overtime at the proper rate. For example,
3 Plaintiff's wage statement with the check date August 21, 2021 is attached hereto as Exhibit 1.
4 This wage statement shows that Defendant paid Plaintiff overtime on August 21, 2021 at the rate
5 of \$14.2158, which makes no sense because his base rate was \$16.05. It is impossible to tell from
6 Plaintiff's wage statements whether he was properly paid.

7 13. Labor Code § 226 provides that every employer is required, "semimonthly or at the
8 time of each payment of wages," to give each employee an itemized wage statement that includes
9 "gross wages earned." Defendants had a policy and practice of violating Labor Code § 226 by
10 failing to provide complete and accurate itemized wage statements to Plaintiff and the putative class
11 members in that the wage statements provided did not, among other things, include the accurate
12 hours worked and the correct gross wages earned. The wage statements further violate Labor Code
13 § 226(a)(9) by failing to list all applicable hourly rates in effect and the number of hours worked at
14 each rate. As noted above, the wage statements do not correctly list hours worked over eight and
15 half in a day as overtime and the overtime rate listed is incorrect. It is impossible to tell from the
16 wage statements whether Defendants properly paid overtime to Plaintiff and other putative class
17 members.

18 14. Defendants had a policy and practice of violating California Labor Code §§ 201-
19 203 by failing to pay Plaintiff and putative class members all wages due and owing at the time of
20 discharge or voluntary quit. Plaintiff and putative class members still are owed wages, including
21 unpaid overtime wages as well as compensation for Defendants' failure to pay Plaintiff and putative
22 class members overtime and the proper rate.

23 **IV. CLASS ACTION ALLEGATIONS**

24 15. Plaintiff brings this action on behalf of himself and as a class action under Code of
25 Civil Procedure § 382 on behalf of a class of similarly situated persons employed by
26 AUTOMATED HARVESTING in the State of California. Specifically, Plaintiff seeks to represent
27 the class of all hourly non-exempt employees employed in agricultural occupations by
28 AUTOMATED HARVESTING within the State of California at any time during the applicable

1 limitations period preceding the original filing of this Complaint and up through the present and
2 until compliance with the law. Plaintiff also seeks to represent the following sub-classes of
3 employees who worked for AUTOMATED HARVESTING at job sites within the State of
4 California:

- 5 (a) All hourly non-exempt employees employed in agricultural occupations by
6 AUTOMATED HARVESTING at any time during the applicable
7 limitations period preceding the original filing of this Complaint and up
8 through the present and until compliance with the law, inclusive, who were
9 not paid overtime for all applicable hours worked and/or were not paid
10 overtime wages at the proper rate;
- 11 (b) All hourly non-exempt employees employed in agricultural occupations by
12 AUTOMATED HARVESTING at any time during the applicable
13 limitations period preceding the original filing of this Complaint and up
14 through the present and until compliance with the law, inclusive, who did
15 not receive complete and accurate wage statements; and
- 16 (c) All hourly non-exempt employees employed in agricultural occupations by
17 AUTOMATED HARVESTING at any time during the applicable
18 limitations period preceding the original filing of this Complaint and up
19 through the present and until compliance with the law, inclusive, who were
20 not paid all wages due upon discharge or voluntary quit as required by Labor
21 Code §§ 201-203.

22 16. The class and sub-classes that Plaintiff seeks to represent contain numerous
23 members and are clearly ascertainable. Plaintiff reserves the right under Rule 3.765 of the
24 California Rules of Court to amend or modify the class and sub-class descriptions with greater
25 specificity or further division into additional sub-classes or limitation to particular issues.

26 17. By their unlawful practices and policies, Defendants have violated the rights of
27 employees under the laws and regulations of the State of California. The questions raised are,
28 therefore, of common or general interest to the class members, who have a well-defined community

of interest in the questions of law and fact raised in this action.

18. Plaintiff's claims are typical of those of the class, as Plaintiff now suffers and has suffered in the past from the same violations of the law as other members of the proposed class. Plaintiff has retained competent counsel to represent himself and the class, and Plaintiff will fairly and adequately represent the interests of the class.

19. This action may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed class and sub-classes are easily ascertainable.

Numerosity

20. The members of the proposed class are so numerous that joinder of all class members is impractical. While the precise number of class members has not been determined at this time, Plaintiff is informed and believes that Defendants have employed as many as 600 workers or more in the relevant time period.

21. Plaintiff alleges that Defendants' employment records would contain relevant information as to the number of members of the proposed class.

Commonality

22. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. Those common questions of law and fact include, without limitation, the following:

- (a) Whether Defendants had a policy or practice of violating Labor Code §§ 510 and 1194 and IWC Wage Order 14-2001 by failing to pay class members all overtime wages due and owing, including failing to pay class members overtime at the proper rate;
- (b) Whether Defendants had a policy and practice of violating Labor Code § 226 by failing to provide required information on wage statements, such as gross wages earned, and listing all applicable hourly rates in effect and the number of hours worked at each rate, and whether those statements were accurate;
- (c) Whether Defendants had a policy and practice of violating Labor Code §§

201-203 by failing to pay departing class members all wages, including overtime wages, due at the time of discharge or voluntary quit; and

(d) Whether Plaintiff and the class members are entitled to equitable relief under Business and Professions Code §§ 17200, *et seq.*

Typicality and Adequacy of Representation

23. Plaintiff's claims are typical of the claims of the proposed class. Plaintiff and all members of the proposed class sustained injuries and economic loss arising out of and caused by Defendants' common course of conduct in violation of laws and regulations alleged in this Complaint.

24. Plaintiff will fairly and adequately protect the interests of all proposed class members. Plaintiff has no interests that are antagonistic to those of the proposed class and is not subject to any unique defenses. Plaintiff also has retained counsel experienced in class actions and in representing employees and protecting employees' rights.

Superiority of Class Action

25. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed class members is not practicable, and questions of law and fact common to the class predominate over any questions affecting only individual members of the class. Each member of the class has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

26. Class action treatment will allow those similarly-situated persons to litigate their claims in the manner that is most effective and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

27. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all proposed class members is impractical. Even if every proposed class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts if individual litigation of numerous cases were to be required. Individualized litigation also would present the potential for

1 varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all
2 parties and to the court system resulting from multiple trials of the same complex factual issues.
3 By contrast, the conduct of this action as a class action with respect to some or all of the issues
4 presented herein gives rise to fewer management difficulties, conserves the resources of the court
5 system and the parties and protects the rights of each proposed class member. Further, it prevents
6 the very real harm that would be suffered by numerous putative class members who simply will be
7 unable to enforce individual claims of this size on their own, and by Defendants' competitors, who
8 will be placed at an unfair competitive disadvantage as their punishment for obeying the law.
9 Plaintiff does not anticipate difficulties in the management of this action.

10 **V. REPRESENTATIVE ACTION ALLEGATIONS**

11 28. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code
12 §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt agricultural occupation
13 employees whom performed work for AUTOMATED HARVESTING within the state of
14 California and were who were not paid overtime for all hours worked and/or were not paid overtime
15 at the proper rate;

16 29. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code
17 §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt agricultural occupation
18 employees whom performed work for AUTOMATED HARVESTING in the State of California
19 who did not receive complete and accurate itemized wage statements in violation of Labor Code §
20 226(a).

21 30. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code
22 §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt agricultural occupation
23 employees whom performed work for AUTOMATED HARVESTING in the State of California
24 who were not paid all wages due at the time of discharge or voluntary quit in violation of Labor
25 Code §§ 201-203.

26 31. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code
27 §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt agricultural occupation
28 employees whom performed work for AUTOMATED HARVESTING in the State of California

1 who were not paid all wages in a timely manner as required by Labor Code § 204b.

2 32. There is a well-defined community of interest in the question of law and fact
3 affecting the aggrieved employees whom Plaintiff seeks to represent. The aggrieved employees'
4 claims against Defendants involve questions of common or general interest, including, but not
5 limited to, the following: (1) whether Defendants had a policy and practice of failing to pay
6 aggrieved employees overtime for all applicable hours worked and/or failed to pay overtime at the
7 proper rate; (2) whether Defendants had a policy and practice of violating Labor Code § 226 by
8 failing to provide required information on wage statements, such as accurately the gross wages
9 earned and the actual hours worked by each employee, as well as all applicable hourly rates in
10 effect and the hours worked at each rate.; (3) whether Defendants had a policy and practice of
11 failing to pay departing aggrieved employees all wages due at the time of discharge or voluntary
12 quit in violation of Labor Code §§ 201-203; (4) and whether Defendants had a policy and practice
13 of failing to pay aggrieved employees in a timely manner as required by Labor Code § 204b.

14 33. Plaintiff's claims are typical of the claims of the members of the aggrieved
15 employees whom Plaintiff seeks to represent on a representative basis and his interests are
16 consistent with, and not antagonistic to, those of the other aggrieved employees. Plaintiff will fairly
17 and adequately represent the interests of the aggrieved employees whom he seeks to represent
18 because Plaintiff is also an aggrieved employee and his claims are typical of those of the aggrieved
19 employees. Plaintiff has retained attorneys who are experienced in the prosecution of class and
20 representative actions, and Plaintiff intends to prosecute this action vigorously.

21 34. Common questions of law and fact exist as to all aggrieved employees that
22 predominate over any other questions affecting only individual aggrieved employees.

23 35. Plaintiff requests permission to amend the Complaint to include additional
24 representatives if Plaintiff is deemed not to be an adequate representative of the aggrieved
25 employees.

26 **VI. FIRST CAUSE OF ACTION**

27 **(UNFAIR BUSINESS PRACTICES – CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)**

28 36. Plaintiff repeats and realleges each and every paragraph above as though fully set

1 forth herein.

2 37. California Business and Professions Code §§ 17200, *et seq.*, prohibit unfair
3 competition in the form of any unlawful, unfair, deceptive, or fraudulent business act or practice.

4 38. Beginning at an exact date unknown to Plaintiff, but at least during the four-year
5 period preceding the filing of this Complaint and up through the present, Defendants committed
6 unlawful acts and practices as defined by California Business and Professions Code §§ 17200, *et*
7 *seq.* Defendants have had a policy and practice of engaging in unlawful and unfair business
8 practices including, but not limited to, violations of:

9 (a) Labor Code §§ 510 and 1194 (failure to pay all wages due, including
10 overtime wages);

11 (b) Labor Code § 226 (failure to provide accurate itemized wage statements);

12 (c) Labor Code §§ 201-203 (failure to pay all wages, including overtime wages,
13 due and owing at time of discharge or voluntary quit); and

14 (d) Industrial Welfare Commission IWC Wage Order No. 14-2001.

15 39. The violations of those laws and the acts and practices described in this Complaint
16 constitute unlawful, unfair, deceptive and fraudulent business acts and practices and unfair
17 competition within the meaning of Business and Professions Code §§ 17200, *et seq.*

18 40. As a direct and proximate result of those acts and practices, Defendants have
19 received and continue to hold as ill-gotten gains money and property belonging to Plaintiff and the
20 class, in that Defendants have profited in those amounts from their unlawful practices.

21 41. Business and Professions Code § 17203 provides that the Court may restore to any
22 person in interest any money or property that may have been acquired by means of unfair
23 competition and may order Defendants to make restitution to Plaintiff for the practices alleged in
24 this Complaint. Plaintiff and putative class members are entitled under Business and Professions
25 Code §§ 17203 and 17208 to restitution and restoration of all wages unlawfully withheld at any
26 time during the four-year period preceding the filing of this Complaint and up through the present
27 and until the violations have been corrected, together with all civil penalties owed in connection
28 with those violations. Plaintiff will, upon leave of the Court, amend this Complaint to state those

amounts when they are ascertained.

42. Plaintiff's success in this action will enforce important rights affecting the public interest and, in that regard, Plaintiff sues on behalf of the proposed class as well as on behalf of himself and the general public. Plaintiff seeks and is entitled to unpaid wages and any other remedy owing to Plaintiff and all others similarly situated.

43. To prevent Defendants from profiting and benefiting from their wrongful and illegal policies and practices, an order requiring Defendants to restore to Plaintiff and class members all monies and property unlawfully gained through Defendants' unlawful practices is appropriate and necessary.

44. Plaintiff takes upon himself enforcement of these laws and lawful claims. There is a financial burden incurred in pursuing this action and it would be against the interests of justice to penalize Plaintiff by forcing him to pay attorneys' fees from the recovery in this action. Therefore, an award of attorneys' fees is appropriate under California Code of Civil Procedure § 1021.5.

Wherefore, Plaintiff prays for relief as set forth below.

VII. SECOND CAUSE OF ACTION

(UNPAID OVERTIME – LABOR CODE §§ 510 and 1194)

45. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

46. Defendants had a policy and practice of failing to pay Plaintiff and other putative class members overtime for all applicable hours worked as well as failing to pay overtime at the proper rate.

47. Plaintiff seeks to recover all overtime wages due to Plaintiff and other putative class members, and interest, under Labor Code §§ 1194, and 218.6.

48. Plaintiff seeks attorneys' fees and costs under Labor Code § 1194, which provides for a private right of action to recover unpaid overtime compensation and also provides for the recovery of attorneys' fees and costs by a prevailing employee.

Wherefore, Plaintiff prays for relief as set forth below.

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VIII. THIRD CAUSE OF ACTION

(UNPAID OVERTIME –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

49. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

50. Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

51. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

52. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 510, 1194, 1198 and 1199.

53. By the actions alleged herein, Defendants failed to pay Plaintiff and other aggrieved employees overtime for all applicable hours worked and/or failed to pay overtime at the proper rate in violation of Labor Code §§ 510, 511, 1194, 1198 and 1199.

54. Therefore, Plaintiff and all current and former aggrieved employees demand the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 510, 511, 1194, 1198 and 1199.

55. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code §§ 1194 and 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

IX. FOURTH CAUSE OF ACTION

(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)

56. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

57. As alleged above, during all or some portion of the proposed class period, Defendants violated Labor Code § 226 through their practice of failing to provide their employees, including Plaintiff and members of the proposed class, with complete and accurate itemized wage

1 statements. Among other things, the wage statements provided by Defendants violated Labor Code
2 § 226(a) by failing to state accurately the gross wages earned and the actual hours worked by each
3 employee, as well as all applicable hourly rates in effect and the hours worked at each rate.

4 58. Under Labor Code § 226(e), Plaintiff and members of the proposed class are entitled
5 to recover the greater of actual damages or \$50 for the initial pay period in which a violation
6 occurred and \$100 for each subsequent pay period in which Defendants failed to comply with the
7 statute, up to a maximum of \$4,000 per employee.

8 59. Under Labor Code § 226(g), Plaintiff is entitled to an award of attorneys' fees and
9 costs incurred in bringing this action.

10 Wherefore, Plaintiff prays for relief as set forth below.

11 **X. FIFTH CAUSE OF ACTION**
12 **(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS –**
13 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

14 60. Plaintiff repeats and realleges each and every paragraph above as though fully set
15 forth herein.

16 61. Labor Code § 2699(f) permits "aggrieved employees," acting on their own behalf
17 and on behalf of the State of California and other current and former employees, to recover certain
18 penalties.

19 62. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code
20 Private Attorneys General Act of 2004 because he is a person who was employed by the alleged
21 violator and against whom one or more of the alleged violations was committed.

22 63. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil
23 action against Defendants for violations of Labor Code § 226(a).

24 64. By their actions as alleged herein, Defendants have failed to comply with Labor
25 Code § 226(a) as it relates to Plaintiff and the other aggrieved employees. As alleged above,
26 Defendants employed and employ a policy and practice of violating Labor Code § 226(a) by failing
27 to provide complete and accurate itemized wage statements to Plaintiff and other aggrieved
28 employees. Among other things, the wage statements provided by Defendants violated Labor Code

§ 226(a) by failing to state accurately the gross wages earned and the actual hours worked by each employee, as well as all applicable hourly rates in effect and the hours worked at each rate.

65. Therefore, Plaintiff, for himself and all current and former aggrieved employees on behalf of the State of California, demand the Labor Code § 226.3 penalties provided for violations of Labor Code § 226(a). (If Labor Code § 226.3 is found not to apply to Defendants' violations of Labor Code § 226(a), Plaintiff alternatively will seek Labor Code § 2699(f) penalties.)

66. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XI. SIXTH CAUSE OF ACTION

(LABOR CODE §§ 201-203)

67. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

68. Labor Code §§ 201 and 202 require an employer to pay its employees all wages due within the times specified by law. Labor Code § 203 provides that if an employer willfully fails to pay those wages within the times specified by Labor Code §§ 201 or 202, the employer must continue to pay the subject employees' wages day-by-day, weekends included, until the back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

69. Defendants unfairly and unlawfully have had a policy and practice of violating Labor Code §§ 201 and 202 by failing to pay Plaintiff and the class all wages earned during their employment within the times specified by those sections.

70. Plaintiff and all other putative class members who ceased employment with Defendants are entitled to unpaid compensation but thus far have not received that compensation.

71. More than 30 days have passed since Plaintiff and certain class members left Defendants' employ.

72. Due to Defendants' willful failure to properly compensate Plaintiff and putative class members timely for all overtime hours worked, Plaintiff and class members whose employment ended at any time during the three-year period preceding the filing of this

Complaint and up through the present and until compliance with the law are entitled to 30 days' wages under Labor Code § 203, together with interest.

Wherefore, Plaintiff prays for relief as set forth below.

XVI. SEVENTH CAUSE OF ACTION

(LABOR CODE §§ 201-203 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

73. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

74. Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

75. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

76. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 201-203.

77. By their actions as alleged herein, Defendants have failed to comply with Labor Code §§ 201-203 as they relate to Plaintiff and the other aggrieved employees.

78. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 201-203.

79. Plaintiff further seek reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XVII. EIGHTH CAUSE OF ACTION

(LABOR CODE § 204b –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

80. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

81. Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties

on their own behalf and on behalf of other current and former employees.

82. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

83. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 204.

84. By their actions as alleged herein, Defendants have failed to comply with Labor Code § 204 as they relate to Plaintiff and the other aggrieved employees.

85. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code § 204.

86. Plaintiff further seek reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

Plaintiff prays for relief as follows:

- i. For an order certifying this action as a class action;
- ii. For disgorgement of profits and restitution and restoration of all costs incurred, sums or property unlawfully withheld and/or losses caused by the policy and practice of failing to pay all overtime compensation owed to Plaintiff and the class members in violation of Business and Professions Code §§ 17200, *et seq.*;
- iii. For compensatory damages in amounts according to proof at time of trial representing the amount of unpaid overtime compensation owed to Plaintiff and the class members for the policy and practice of failing to pay all wages due and owing, during the applicable limitations period preceding the filing of the Complaint and up through and including the present and until the date of compliance with the law;

- iv. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current and former aggrieved employee for each violation of Labor Code §§ 510, 1194, 1198, and 1199 (failure to pay overtime) during the applicable limitations period preceding the original filing of the Complaint and up to and including the present and until the date of compliance with the law;
- v. For the statutory amounts provided by Labor Code § 226(e) for Plaintiff and class members during the applicable limitations period preceding the filing of this Complaint and up through and including the present and until the date of compliance with the law;
- vi. For civil penalties as specified by Labor Code § 226.3 for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint. (Should Labor Code § 226.3 be found not to apply to Defendants' violations of Labor Code § 226(a), Plaintiff alternatively seeks the civil penalties specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint.)
- vii. For waiting time penalties as provided by Labor Code § 203 for Plaintiff and class members;
- viii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 201-203 (failure to pay departing employees all wages due and owing) during the applicable limitations period preceding the original filing of the

Complaint and up to and including the present and until the date of compliance with the law;

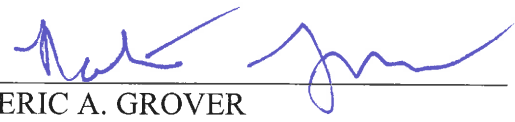
- ix. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each aggrieved employee for each violation of Labor Code § 204b (failure to pay wages in a timely manner) during the applicable limitations period preceding the original filing of the Complaint and up to and including the present and until the date of compliance with the law;
- x. For reasonable attorneys' fees and costs as allowed by Labor Code §§ 218.5, 226(e), 226(g), 1194(a), 2699(g)(1) and Code of Civil Procedure § 1021.5;
- xi. For all interest as required by Labor Code § 218.6 and other applicable law;
- xii. For all costs of this suit as allowed by law, including Labor Code §§ 218.5, 226(g), 1194, and 2699(g)(1); and
- xiii. For such other and further relief as the Court may deem proper.

Dated: November 15, 2022

Respectfully submitted,

KELLER GROVER LLP

By:


ERIC A. GROVER
ROBERT SPENCER
Attorneys for Plaintiff and the Proposed Class

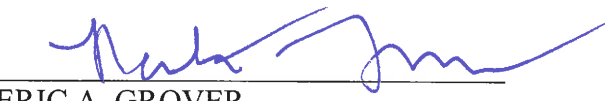
JURY TRIAL DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

Dated: November 15, 2022

KELLER GROVER LLP

By:


ERIC A. GROVER
ROBERT SPENCER
Attorneys for Plaintiff and the Proposed Class

PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On **November 15, 2022**, in the case of *Hernandez v. Harvesting, LLC* Monterey Superior Court of Case Number 22CV002717 I served the foregoing document(s):

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) below, using the following means:

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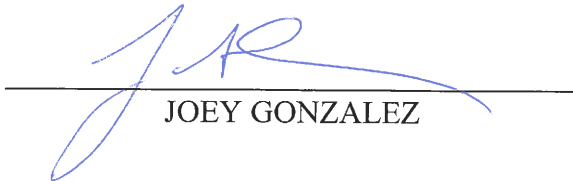
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☒	(BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per agreement between the parties.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


JOEY GONZALEZ