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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO
UNLIMITED JURISDICTION**

LOUISE FURMAN, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

THE LEMOS FAMILY FARM, INC. and
DOES 1 to 50, inclusive,

Defendants.

CASE NO.:

CLASS ACTION

COMPLAINT AND JURY DEMAND

- 1. FAILURE TO PAY OVERTIME WAGES (Labor Code §§ 510, 1194, 1198 and Wage Order)**
- 2. FAILURE TO PAY REGULAR WAGES (Labor Code § 204)**
- 3. FAILURE TO PAY MINIMUM WAGE (Labor Code §§ 1194, 1194.2 and 1197.1)**
- 4. FAILURE TO PROVIDE REST BREAKS (Labor Code §§ 226.7 And Wage Order)**
- 5. FAILURE TO PROVIDE MEAL PERIODS (Labor Code §§ 226.7, 512, And Wage Order)**
- 6. FAILURE TO PROVIDE RECOVERY PERIODS (Labor Code §§ 226.7, 512, And Wage Order)**
- 7. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS (Labor Code §§ 226);**
- 8. VIOLATION OF CAL. BUS. AND PROF. CODE §17200**
- 9. VIOLATION OF THE PRIVATE ATTORNEY GENERALS ACT (Labor Code §§ 2692 and 2699).**

Plaintiff Louise Furman (hereinafter "Plaintiff"), hereby submits this Class Action Complaint
against Defendant THE LEMOS FAMILY FARM, INC., and other as yet unknown entities

1 (hereinafter collectively referred to as “Defendants”) on behalf of herself and a class of all other
2 similarly situated current and former employees of Defendant for wages owed, including meal, rest
3 and recovery period wages, as well as waiting time penalties, and penalties or damages for failure to
4 keep accurate records, other penalties under the California Labor Code, and for restitution and
5 injunctive relief as follows:

6 **INTRODUCTION**

7 1. Plaintiff brings this wage and hour Class Action against Defendants, and each of them,
8 pursuant to Code of Civil Procedure §382. Plaintiff brings this action on behalf of herself and for the
9 benefit of all other persons employed directly by Defendant, and each of them, in the position of non-
10 exempt employee who were not paid wages pursuant to California law prior and subsequent to the
11 date this action was filed. All allegations in this wage and hour Class Action Complaint are based
12 upon information and belief, except for those allegations which pertain to the Plaintiff named herein
13 and their counsel. Plaintiff’s information and beliefs are based upon, inter alia, the investigation
14 conducted to date by Plaintiff and her counsel. Each allegation in this wage and hour Class Action
15 Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable
16 opportunity for further investigation and discovery.

17 2. On information and belief, for at least four years prior to the filing of this action and
18 through to the present, Defendant employed Plaintiff and the putative class members in San Mateo
19 County, State of California, and maintained and enforced against Plaintiff and the putative class
20 members the systemic policies, practices, and/or customs complained of herein. Plaintiff seeks relief
21 on behalf of herself, and the members of the Plaintiff Class, as a result of systemic employment
22 policies, practices and procedures, more specifically described below, which violate the California
23 Labor Code, and the orders and standards promulgated by the California Department of Industrial
24 Relations, Industrial Welfare Commission, and Division of Labor Standards Enforcement, and which
25 have resulted in the failure of Defendants to pay Plaintiff and members of the Class and Subclass all
26 wages owed to them. Said employment policies, practices and procedures are generally described as
27 follows:
28

- 1 a. Defendant failed to provide Plaintiff and class members with rest periods and/or failed
2 to properly compensate Plaintiff and members of the proposed class for such
3 malfeasance in providing proper rest periods, as required by Labor Code § 226.7 and
4 Wage Order;
- 5 b. Defendant failed to provide Plaintiff and class members with recovery periods and/or
6 failed to properly compensate Plaintiff and members of the proposed class for such
7 malfeasance in providing proper recovery periods, as required by Labor Code § 226.7
8 and Wage Order;
- 9 c. Defendant failed to provide Plaintiff and class members with duty-free meal periods of
10 at least thirty minutes and/or failed to properly compensate Plaintiff and members of
11 the proposed class for such malfeasance in providing proper meal periods, as required
12 by Labor Code §§ 226.7 and 512 and Wage Order;
- 13 d. Defendant failed to pay Plaintiff and class members all overtime wages in violation of
14 Labor Code §§ 510 and 1198;
- 15 e. Defendant failed to pay Plaintiff and class members all applicable minimum wages for
16 hours worked in violation of Labor code §§ 1182.12, 1194, 1197, 1197.1, and 1198;
- 17 f. Defendant failed to issue accurate itemized wage statements to their employees,
18 including Plaintiff and the class members, in violation of, inter alia, Labor Code §226
19 and Wage Order;
- 20 g. Violating Business and Professions Code §§ 17200 et seq. as further set forth below.
- 21 3. Plaintiff also alleges that Defendant had the clear ability to pay such wages as
22 are/were due and owing to the Plaintiff and members of the Class, but intentionally did not pay such
23 wages, in conscious disregard of the rights of Plaintiff and the members of the Class to timely
24 payment of their wages.
- 25 4. This action seeks relief for the un-remediated violations of California law including,
26 inter alia:
- 27 a. Damages and/or restitution, as appropriate, to Plaintiff and to the Class Members, for
28 non-payment of the wages due them and interest thereon;

- b. Damages and/or restitution, as appropriate, to Plaintiff and to the Class Members, for non-payment of meal and rest period wages, including premium wages;
- c. Damages and/or restitution, as appropriate, to Plaintiff and to the Class Members, for non-payment of wages;
- d. Damages and/or penalties for Plaintiff and Class Members who were not issued accurate itemized wage statements in conformity with California law.
- e. Damages and/or penalties for Plaintiff and Class Members who voluntarily quit, or were laid off and/or terminated, but who were not paid all wages due and owing in conformity with California law;
- f. Implementation of other equitable and injunctive relief, including, inter alia, an injunction prohibiting Defendants, and each of them, from continuing to:
- i. fail to pay all wages due in accordance with the Labor Code and Wage Order;
 - ii. fail to authorize and permit mandated recovery, meal and rest periods or pay additional wages to their non-exempt production employees who did not receive the required meal and rest periods in accordance with the Labor Code and Wage Order;
 - iii. fail to issue accurate itemized wage statements in accordance with the Labor Code and Wage Order; and,
 - iv. fail to pay all compensation due to their non-exempt production employees at the time of the termination of their employment in accordance with the Labor Code; and,
- g. Attorney's fees and costs as provided by statute and/or applicable case law including without limitation Labor Code §§ 226 and 1194, and Code of Civil Procedure § 1021.5; and,
- h. Such other relief as the Court deems just and proper.

5. The claims herein are brought by Plaintiff on her own behalf and on behalf of the Class which is defined as individuals who are currently or have been employed in California by

1 Defendants as non-exempt employees during the Class Period (which commences four years prior to
2 the filing of this action and continues until judgment is rendered herein), and whose working
3 conditions are not controlled by a collective bargaining agreement.

4 6. “Class Period” shall mean the period from four years prior to the date this Complaint
5 was filed, through and including the date judgment is rendered in this matter. Plaintiff herein
6 reserves the right to amend this Complaint to reflect a different Class Period as discovery in this
7 matter proceeds.

8 7. The actions of Defendants are in violation of the Labor Code as well as IWC wage
9 orders and, as a result, are unlawful and unfair acts, thus constituting a violation of California
10 Business & Professions Code section 17200, *et seq.* (Unfair Competition Law, “UCL”).

11 8. The policies, practices and customs of Defendants described above and herein have
12 resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that
13 routinely adhere to the strictures and requirements of the Labor Code and of the UCL.

14 **JURISDICTION AND VENUE**

15 9. This Court has jurisdiction over Plaintiff and Class members’ claims for unpaid
16 wages, denied meal and rest breaks, failure to time wages, failure to provide accurate wage
17 statements, failure to pay wages, and failure to pay all earned wages upon termination pursuant to the
18 Labor Code, including, but not limited to, sections 200, 201, 202, 203, 218, 226, 226.7, 500, 510 512,
19 1194 and 1197, and the IWC wage orders.

20 10. This Court has jurisdiction over Plaintiff and Class members’ claims for injunctive
21 relief, including restitution of earned wages, which are the money and property of Plaintiff and Class
22 members, arising from Defendants’ unfair competition under UCL sections 17203 and 17204.

23 11. This Court also has jurisdiction over Plaintiff and Class members’ claims for penalties
24 in violation of the Labor Code pursuant to UCL section 17202, as well as pursuant to the applicable
25 Labor Code provisions.

26 12. Venue as to Defendant is proper in this County pursuant to Code of Civil Procedure
27 section 395(a). Plaintiff is informed and believes, and thereon alleges that Defendant conducts
28

1 business, employs Class members, and has locations in this County, and the events complained of
2 occurred in this County.

3 **THE PARTIES**

4 13. Plaintiff Louise Furman (hereinafter, "Plaintiff") has been employed by Defendant
5 during the Class Period. At all times relevant hereto, Plaintiff resided in the County of San Mateo.
6 Plaintiff is a member of the Class and Subclass.

7 14. Plaintiff is informed and believes and thereon alleges that at all times relevant to this
8 litigation, Defendant was and/or is a California Company, which conducted and/or conducts, at all
9 relevant times, a significant portion of its business in the State of California. Defendants were at all
10 relevant times doing business throughout the State of California and serve numerous customers
11 throughout the State.

12 15. Defendant is a "person" as defined in Labor Code section 18 and UCL section 17201.
13 Defendant is also an "employer" as that term is used in the Labor Code and the IWC wage orders.

14 16. The identities of Defendants designated as DOES 1-50 are currently not known.
15 However, Plaintiff is informed, and believes, and thereon alleges that each of the named and
16 fictitiously named defendants is an "employer" of Plaintiff and the Class by legal recognition under
17 such principles as "joint enterprise", "alter ego", "co-employer" or some other legally recognized
18 principle. Each of the defendants, whether specifically named and fictitiously names, exercises
19 sufficient control over the terms of employment to be legally recognized as an "employer" of Plaintiff
20 and the Class for purposes of California's wage and hour laws and regulations.

21 17. The members of the Class, including the named, representative Plaintiff, have been
22 employed during the Class Period in California. The practices and policies which are complained of
23 by way of this Complaint are enforced by Defendant throughout the State of California.

24 18. Defendant directly, and indirectly, hired Plaintiff in San Mateo County. During all
25 times relevant to this litigation, Plaintiff performed work at various times during the Class Period at
26 agreed upon hourly rates that varied over her period of employment.

27 **FACTUAL ALLEGATIONS**

1 19. Plaintiff worked for Defendant as a non-exempt, hourly-paid season employee at its
2 amusement park.

3 20. Plaintiff's regular work schedule was five to six days per week from approximately
4 8:00am to 5:00pm.

5 21. Plaintiff's job duties varied, but included selling entry tickets to visitors of the
6 amusement park, managing the amusement park parking lot, working the concession stand, and
7 operating several of the rides and attractions such as the slide and petting zoo.

8 22. Defendant's policies, procedures and practices deny Plaintiff and members of the
9 putative class all overtime wages they are entitled to under California Law.

10 23. Specifically, Defendant does not pay any of its non-exempt employees overtime,
11 claiming that they qualify for an exemption as agricultural employees under California Law.

12 24. However, as indicated above, Plaintiff, and putative class members, are not
13 agricultural employees because they are employed by Defendant to operate its amusement park.

14 25. Thus, Plaintiff and putative class members do not qualify for any agricultural
15 exemption, and are owed overtime wages equal to one and one-half times their pay rate for each hour
16 worked in excess of forty (40) hours in a week and eight (8) hours in a day.

17 26. Additionally, Defendant's policies, procedures and practices deny Plaintiff and
18 members of the putative class all minimum wages to which they are entitled for hours worked for
19 Defendant.

20 27. Specifically, Plaintiff and putative class members lived on Defendant's property
21 during the relevant class period, and are required to walk from their residences to the amusement park
22 area to clock in.

23 28. Similarly, Plaintiff and putative class members are required to walk from the
24 amusement park area after clocking out to the residential area.

25 29. This walk takes approximately ten (10) minutes one-way.

26 30. Plaintiff and putative class members are not compensated for this time.

27 31. Defendant's policies, procedures and practices deny Plaintiff and members of the
28 putative class the right to meal and rest breaks, as well as recovery periods, as prescribed under

1 California Law. Rather, Defendant maintains control over the activities and actions of members of
2 the Class during mandated meal and rest breaks, as evidenced by payroll and timekeeping records.
3 These records show conclusively that Plaintiff and Class members are not provided with meal breaks,
4 in violation of California Law. Defendant similarly denies rest breaks to other employees.

5 32. As a result, Plaintiff and members of the Class are not relieved of all duties during
6 their meal and rest periods as is required by law. Defendant's policy and practice is to not pay
7 Plaintiff and members of the Class any premium for non-compliant or missed meal and rest breaks.

8 33. Despite working outdoors, often in heated conditions, Defendant does not maintain a
9 policy or practice of providing for recovery periods. Plaintiff and members of the Class are not
10 provided with on the clock recovery periods as is required by law. Defendant's policy and practice is
11 to not pay Plaintiff and members of the Class any premium for non-compliant recovery periods.

12 34. Under California law, "hours worked" means the time during which an employee is
13 subject to the control of an employer, and includes all the time the employee is suffered or permitted
14 to work, whether or not required to do so." 8 CCR § 11090(2)(G).

15 35. California Department of Labor Standards Enforcement (DLSE) policy follows the
16 dictates of the IWC and requires compensation for all time the employee spends, either directly or
17 indirectly, performing services which inure to the benefit of the employer.

18 36. Defendant further fails to provide members of the Class with accurate wage statements
19 reflecting the wages and penalties to which they are entitled, and which further do not permit
20 members of the Class to readily determine if the wages they receive are accurate and complete.

21 37. Defendant's unlawful conduct has been widespread, repeated and willful throughout
22 its facilities in California. Defendant knew or should have known that its policies and practices have
23 been unlawful and unfair.

24 **CLASS ACTION ALLEGATIONS**

25 38. Plaintiff brings this action as a class action pursuant to California Code of Civil
26 Procedure ("CCP") section 382, on behalf of the following defined Class:

27 All individuals who are currently or have been employed in California
28 by defendants as a non-exempt seasonal employee during the Class

1 Period, and whose working conditions are not controlled by a collective
2 bargaining agreement.

3 39. As used throughout this Complaint, the term “Class Period” shall mean the period
4 from four years prior to the date this Complaint was filed, through and including the date judgment is
5 rendered in this matter.

6 40. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during
7 the Class Period, there have been over one hundred Class members. As a result, the members of the
8 Class are so numerous that joinder of all members is impossible and/or impracticable.

9 41. Commonality: Common questions of law and fact exist as to all members of the Class
10 and predominate over any questions affecting solely individual members of the Class. Among the
11 questions of law and fact, that are relevant to the adjudication of Class members’ claims are the
12 following:

- 13 a. Whether Defendant failed to provide Plaintiff and members of the Class with
14 timely, duty-free 30 minute meal periods in violation of the Labor Code;
- 15 b. Whether Defendant failed to provide Plaintiff and Class Members with all
16 earned overtime wages;
- 17 c. Whether Defendant failed to provide Plaintiff and Class Members with all
18 earned minimum wages;
- 19 d. Whether Defendant’s failure to provide Plaintiff and members of the Class
20 with off-duty meal periods is an unlawful, unfair or fraudulent business act or
21 practice in violation of UCL section 17200, *et seq.*;
- 22 e. Whether Defendant failed to provide Plaintiff and members of the Class with
23 timely, duty-free rest periods in violation of the Labor Code;
- 24 f. Whether Defendant’s failure to provide Plaintiff and members of the Class
25 with off-duty rest periods is an unlawful, unfair or fraudulent business act or
26 practice in violation of UCL section 17200, *et seq.*;
- 27 g. Whether Defendant unlawfully and/or willfully deprived Plaintiff and
28 members of the Class of meal, recovery and rest breaks and/or pay/premiums

1 for missed meal, recovery and rest breaks pursuant to Labor Code sections
2 200, 226.7, 512, and 8 CCR section 11090;

3 h. Whether Defendant failed to provide Plaintiff and members of the Class with
4 accurate wage statements in violation of Labor Code section 226, and
5 applicable Industrial Welfare Commission Orders, and applicable State
6 Regulations;

7 i. Whether Defendant had/has policies and/or practices that result in hours
8 worked not being adequately captured and recorded;

9 j. Whether Defendant had/has policies and/or practices that result in hours
10 worked not being properly compensated;

11 k. Whether Defendant unlawfully and/or willfully failed to pay Plaintiff and
12 members of the Class for hours worked in violation of the applicable Industrial
13 Welfare Commission Order and Labor Code sections 200, 226, 226.7, 500,
14 510, 1197, 1194 and 1198;

15 l. Whether Plaintiff and members of the Class sustained damages, and if so, the
16 proper measure of such damages, as well as interest, penalties, costs, attorneys'
17 fees, and equitable relief; and,

18 m. Whether Defendant violated the Unfair Competition Law of California,
19 Business and Professions Code sections 17200, *et seq.*, by violating the above-
20 cited provisions, and treating Plaintiff and members of the Class unfairly by
21 depriving them of recovery, meal and rest breaks and failing to provide and
22 pay for missed breaks, failing to pay wages upon termination, failing to furnish
23 an accurate, itemized wage statement upon payment of wages and failing to
24 pay all compensation due upon discharge.

25 42. Typicality: Plaintiff's claims are typical of the members of the Class. Plaintiff, like
26 other members of the Class, was subjected to Defendants' policies and/or practices set forth above.
27
28

1 43. Adequacy of Representation: Plaintiff will fairly and adequately protect the interests
2 of the members of the Class and has retained counsel competent and experienced in both class action
3 and employment litigation.

4 44. Superiority: Questions of law or fact common to Class members predominate over any
5 questions solely affecting individual Class members and class action is superior to other available
6 methods for the fair and efficient adjudication of this controversy. Class action treatment will allow a
7 large number of similarly situated Class members to simultaneously and efficiently prosecute their
8 common claims in a single forum without the needless duplication of effort and expense that
9 numerous individual actions would entail. In addition, a class action will serve the important public
10 interest of permitting Class members harmed by Defendants' unlawful policies and/or practices to
11 effectively pursue recovery of the sums owed to them.

12 45. Plaintiff knows of no difficulty which will be encountered in the management of this
13 litigation which would preclude its maintenance as a class action.

14
15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES INCLUDING OVERTIME**

17 **[California Labor Code §§ 510, 1194 and 1198, and Applicable Industrial Welfare Commission
18 Wage Order]**

19 46. Plaintiff and the Members of the Class re-allege and incorporate by reference, as
20 though fully set forth herein, the paragraphs previously alleged in this Complaint.

21 47. This action is brought, in part, pursuant to the Wage Order and Labor Code §§ 510,
22 1194 and 1198. Under the Wage Order and Labor Code § 510, Defendant was required to
23 compensate Plaintiff and all Class Members for all overtime, calculated at one and one-half (1.5)
24 times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40)
25 hours per week, two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours
26 per day, and two (2) times the regular rate of pay for hours worked in excess of eight (8) hours on the
seventh (7th) day of work.

27 48. While employed by Defendant, Plaintiff and Class Members were required to work
28 more than eight (8) hours in a day or forty (40) hours in a week. Regardless of the number of actual

1 hours worked, and even though Plaintiff and all Class Members are not exempt from California
2 overtime laws, Plaintiff and Class Members were not and are not afforded overtime compensation for
3 any hours in excess of eight (8) hours in a workday and/or forty (40) hours per week. By failing to
4 compensate Plaintiff and all Class Members for the hours actually worked, Defendant has failed and
5 continue to fail to pay the overtime compensation owed to Plaintiff and all Class Members pursuant
6 to the Wage Order and the Labor Code.

7 49. Plaintiff is informed and believes and based thereon alleges that Defendant's policy
8 and practice of requiring overtime work and not paying for said work according to the overtime
9 mandates of California law is, and at all times herein mentioned was, in violation of Labor Code §
10 1194, applicable regulations, and the Wage Order. Defendant's employment policies and practices
11 wrongfully and illegally failed to compensate Plaintiff and Class Members for overtime
12 compensation earned as required by California law.

13 50. The conduct of Defendant as described herein was willful and intentional and part of a
14 corporate policy, procedure and practice. Furthermore, Defendant willfully failed to pay Plaintiff
15 Class Members proper compensation for all overtime hours worked at the appropriate rate of
16 overtime pay.

17 51. Such a pattern, practice and uniform administration of unlawful corporate policy
18 regarding employee compensation as described herein creates an entitlement to recovery by Plaintiff
19 and each Class Member for damages and wages owed, and for penalties, interest, costs and attorney's
20 fees, in an amount to be proven at time of trial.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES ALL REGULAR WAGES**

23 **[California Labor Code § 204]**

24 52. Plaintiff and the Members of the Class re-allege and incorporate by reference, as
25 though fully set forth herein, the paragraphs previously alleged in this Complaint.

26 53. At all times relevant herein, Defendant was required, by California Labor Code § 204,
27 to compensate Plaintiff and Class Members correct and proper regular wages for all regular hours
28 worked.

54. As a pattern and practice, Defendant regularly required Plaintiff and Class Members to work more than eight (8) hours in a day, and forty (40) hours in a week; and required Plaintiff and Class Members to work through meal and rest breaks. Regardless of the number of hours worked, Plaintiff and Class Members received the same pay, without payment of wages for all hours actually worked.

55. As a pattern and practice, Defendant regularly failed to pay Plaintiff and Class Members the proper wages for all hours worked

56. Plaintiff is informed and believes and based thereon alleges that Defendant willfully failed to pay her and Class Members all regular wages for all hours worked. Plaintiff is informed and believes and based thereon alleges that Defendant's willful failure to provide all regular wages due and owing upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and Class Members are entitled to compensation pursuant to Labor Code § 203.

57. Such a pattern, practice and uniform administration of unlawful corporate policy regarding employee compensation as described herein creates an entitlement to recovery by Plaintiff and Class Members for damages and wages owed, and for penalties, interest, costs and attorney's fees.

THIRD CAESE OF ACTION

FAILURE TO PAY MINIMUM WAGES

[California Labor Code §§ 1194, 1194.2, and 1197.1]

58. Plaintiff and the Members of the Class re-allege and incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

59. This cause of action is brought pursuant to Labor Code § 1194, which provides that non-exempt employees are entitled to the statutory hourly minimum wage for work performed.

60. At all times relevant herein, Defendant was required to compensate Plaintiff and Class Members at least the statutorily mandated minimum wage for all regular hours worked.

61. As a pattern and practice, Defendant regularly required Plaintiff and Class Members to walk from their residence to a particular location to clock in without compensating them for that time.

62. As a result, Defendant regularly failed to pay Plaintiff and Class Members the statutorily required minimum wage for all hours worked.

63. Defendant's conduct as alleged herein is in violation of Labor Code § 1194 and the Wage Order. Defendant's employment policies and practices wrongfully and illegally failed to compensate Plaintiff and Class Members for all hours worked at minimum wages as required by California law.

64. Plaintiff is informed and believes and based thereon allege that Defendant willfully failed to pay her and Class Members minimum wages for all hours worked. Plaintiff is informed and believes and based thereon alleges that Defendant's willful failure to provide wages due and owing upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due.

65. Such a pattern, practice and uniform administration of unlawful corporate policy regarding employee compensation as described herein creates an entitlement to recovery by Plaintiff and Class Members for damages and wages owed, and for liquidated damages, penalties, interest, costs and attorney's fees.

FOURTH CAUSE OF ACTION

REST PERIODS

[Labor Code §§226.7, 558 & 1198, and Wage Order]

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

67. Wage Order, at section 12(A) provides, in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof [...] Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

68. *Labor Code* § 226.7, requires that Defendant provide Plaintiff and each class member all rest periods specified in the applicable Wage Orders and provides that Plaintiff and each class member is entitled to be paid one additional hour of pay per day at their regular rate of compensation as additional wages for the denied rest periods.

69. Plaintiff and each class member suffered a loss equal to his/her applicable hourly wage rate times the total number of times he/she was not authorized and permitted to take the legally-required rest periods and has therefore not been paid all of the wages due. Accordingly, Plaintiff and each class member are entitled to recover the unpaid wages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

MEAL PERIODS

[Labor Code §§ 226.7, 512, 558, & 1198, and Wage Order]

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

71. Defendant violated the applicable statutes, as well as Wage Order. Wage Order provides, in pertinent part: “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” *Labor Code* § 512 contains parallel language.

72. Plaintiff alleges that he and members of the proposed class were not relieved of all duty for an entire 30 minutes, due to policies and practices required by their employers. Rather, during their meal period, workers routinely received less than thirty minutes of duty-free time.

73. *Labor Code* § 226.7 requires that Defendant provide Plaintiff and each class member all meal periods specified in the applicable Wage Order and that Plaintiff and each class member was to be paid one additional hour of pay per day at his/her regular rate of compensation as additional wages for meal periods that were not properly provided.

74. Plaintiff and each class member have suffered a loss equal to his/her applicable hourly wage rate times the total number of times he/she was not authorized and permitted to take the legally-required meal periods and have therefore not been paid all of the wages due. Accordingly, Plaintiff and each class member are entitled to recover the unpaid wages in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

RECOVERY PERIODS

[Labor Code §§226.7, 558 & 1198, and Wage Order]

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

1 76. Labor Code § 226.7, requires that Defendant provide Plaintiff and each class member
2 with recovery periods, in order to afford employees an opportunity to cool down and prevent heat
3 illness.

4 77. As specified in the statute, employees who are not provided with recovery periods
5 shall be provided with one additional hour of premium pay at their regular rate of pay.

6 78. Defendant's policy and practice failed to provide employees with recovery periods.

7 79. Plaintiff and each class member suffered a loss equal to his/her applicable hourly wage
8 rate times the total number of times he/she was not authorized and permitted to take the legally-
9 required rest periods and has therefore not been paid all of the wages due. Accordingly, Plaintiff and
10 each class member are entitled to recover the unpaid wages in an amount to be proven at trial.

11 **SEVENTH CAUSE OF ACTION**

12 **ITEMIZED WAGE STATEMENT (CHECK STUBS) PENALTIES**

13 **[LABOR CODE §§226 and 558]**

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

15 81. At all times relevant, each Defendant violated *Labor Code* § 226(a) by falsely or
16 failing to provide accurate, itemized wage statements, because the statements failed to accurately
17 report one or more of the following:

- 18 a. all employers' names and addresses;
- 19 b. total hours worked;
- 20 c. applicable rates of pay;
- 21 d. the number of piece rate units;
- 22 e. the applicable piece rate;
- 23 f. the rate of pay and total hours for each assignment; and,
- 24 g. gross and net wages earned.

25 82. Pursuant to *Labor Code* §§ 226(e) and (h), Plaintiff and each class member are entitled
26 to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
27 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
28

1 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). Plaintiff and each class
2 member are further entitled to an award of costs and reasonable attorney's fees.

3 83. Defendant failed to accurately record the wages due to Plaintiff and members of the
4 proposed class, specifically including, but not limited to, by failing to record premium wages for
5 Defendants' failure to provide proper rest , recovery and meal breaks.

6 84. Plaintiff and members of the Plaintiff Class were injured by Defendant'S failure to
7 provide accurate wage statements because, among other things, they were unable to determine the
8 proper amount of wages actually owed to them, and whether they had received full compensation
9 therefore.

10 85. Plaintiff and members of the Plaintiff Class request recovery of *Labor Code* § 226(e)
11 penalties according to proof, as well as interest, attorney's fees and costs pursuant to *Labor Code* §
12 226(e), and all other damages, attorneys' fees, costs, expenses and interest permitted by statute.

13 EIGHTH CAUSE OF ACTION

14 RESTITUTION

15 **[Unlawful Competition in Violation of Business and Professions Code §§ 17200 et seq.]**

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

17 87. Section 17200 of the California *Business and Professions Code* prohibits any
18 unlawful, unfair or fraudulent business act or practice.

19 88. Plaintiff brings this cause of action in a representative capacity on behalf of the
20 general public and the persons affected by the unlawful and unfair conduct described herein. Plaintiff
21 and members of the proposed class have suffered and continue to suffer injury in fact and deprivation
22 of wages and monies as a result of Defendants' actions.

23 89. The actions of Defendants, as herein alleged, amount to conduct which is unlawful and
24 a violation of law. As such, said conduct constitutes unfair business practices, in violation of
25 *Business and Professions Code* §§ 17200 et. seq.

26 90. Defendants' conduct as herein alleged has damaged Plaintiff and the members of the
27 Plaintiff Class by denying them wages due and payable, and by failing to provide proper wage
28 statements. Defendants' actions are thus substantially injurious to Plaintiff and the members of the

1 Class, causing them injury in fact and loss of money.

2 91. As a result of such conduct, Defendants have unlawfully and unfairly obtained monies
3 owed to Plaintiff and the members of the Plaintiff Class.

4 92. All members of the Class can be identified by reference to payroll and related records
5 in the possession of the Defendants. The amount of wages due to Plaintiff and members of the Class
6 can be readily determined from Defendants' records. The members of the proposed class are entitled
7 to restitution of monies due and obtained by Defendants during the Class Period as a result of
8 Defendants' unlawful and unfair conduct.

9 93. During the Class Period, Defendants committed, and continue to commit acts of unfair
10 competition as defined by Sections 17200 et. seq. of the *Business and Professions Code*, by and
11 among other things, engaging in the acts and practices described above.

12 94. Defendants' course of conduct, acts, and practices in violation of the California laws,
13 as mentioned in each paragraph above, constitute distinct, separate and independent violations of
14 Sections 17200 et seq. of the *Business and Professions Code*.

15 95. The harm to Plaintiff and the members of the Class of being wrongfully denied
16 lawfully earned but unpaid wages outweighs the utility, if any, of Defendants' policies and practices
17 and, therefore, Defendants' actions described herein constitute an unfair business practice or act
18 within the meaning of *Business and Professions Code* §§ 17200, et seq.

19 96. Defendants' conduct described herein threatens an incipient violation of California's
20 wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly
21 threatens or harms competition.

22 97. Defendants' course of conduct described herein further violates *Business and*
23 *Professions Code* §§ 17200, et seq., in that it is fraudulent, improper, and/or unfair.

24 98. The unlawful, unfair, and fraudulent business practices and acts of Defendants as
25 described herein above have injured Plaintiff and members of the Class in that they were wrongfully
26 denied the timely and full payment of wages owed to them.

27 99. Defendants have been unjustly enriched as a direct result of their unlawful business
28 practices alleged in this complaint and will continue to benefit from those practices and have an

1 unfair competitive advantage if allowed to retain the unpaid wages.

2 **NINTH CAUSE OF ACTION**

3 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

4 **[California Labor Code §§ 2692 and 2699]**

5 100. Plaintiff incorporates the paragraphs above in this Complaint as though fully set
6 forth herein.

7 101. As a result of the acts alleged above, including the Labor Code violations set
8 forth in the paragraphs above, Plaintiff seeks penalties under Labor Code § 2698 et seq. as a
9 consequence of Defendant's violations, including under Labor Code §§ 201-204, 226, 226(a),
10 226.7, 510, 512, 558, 1174, 1194, 1197, 1198, and 2802.

11 102. For each such violation, Plaintiff and all other aggrieved employees are entitled
12 to penalties in an amount to be shown at the time of trial subject to the following formula (with
13 Plaintiff and the other aggrieved employees being referred to collectively as "Plaintiffs" for this
14 cause of action):

15 103. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
16 each subsequent violation of Labor Code §§ 201-204, 226, 226(a), 226.7, 510, 512, 558, 1174
17 and 1194, per employee per pay period.

18 104. Pursuant to Labor Code § 2699(a), all penalties as provided for by Labor Code §
19 558.

20 105. For Defendant's failure to provide uninterrupted off-duty meal and rest periods,
21 Defendant is liable to Plaintiffs an aggrieved employees for one hour of additional pay at the
22 regular rate of compensation for each workday that the full and uninterrupted, off-duty rest and
23 /or meal periods were not provided. Defendant is also liable for civil penalties pursuant to
24 Labor Code §§ 558 and 2699 as follows: for any initial violation, \$50.00 for each Plaintiff for
25 each pay period during which the Plaintiffs were not provided proper meal and rest breaks; and
26 for each subsequent violation \$100.00 for each Plaintiff for each pay period during which the
27 Plaintiffs were not provided proper meal and rest breaks.

28 106. For Defendant's failure to pay wages due, Plaintiffs are entitled to recover such
amounts, plus interest thereon, attorney's fees and costs. Defendant is also liable for civil

1 penalties pursuant to Labor Code §§ 558 and 2699 as follows: for any initial violation, \$50.00
2 for each Plaintiff for each pay period during which the Plaintiff was not paid all earned wages;
3 and for each subsequent violation, \$100.00 for each Plaintiff for each pay period during which
4 the Plaintiff was not paid all wages.

5 107. For Defendant's failure to furnish accurate wage statements, Plaintiffs are
6 entitled to recover the greater of all actual damages or \$50.00 for the initial violation and
7 \$100.00 for each subsequent violation, up to \$4,000.00. Defendant is additionally liable for
8 civil penalties pursuant to Labor Code §§ 226.3 and 2699 in the amount of \$250.00 for each
9 Plaintiff per initial violation and \$1,000.00 for each Plaintiff per subsequent violation.

10 108. For Defendant's failure to keep accurate payroll records, Defendant is liable for
11 civil penalties pursuant to California Labor Code §§ 1174.5 and 2699 in the amount of \$500.00
12 per violation.

13 109. All penalties will be allocated 75% to the Labor Workforce Development
14 Agency, and 25% to the affected employees, and all wages will be allocated to the aggrieved
15 employees.

16 110. Plaintiffs have met all of the requirements set forth in Labor Code §§ 2699.3
17 necessary to commence a civil action against Defendants for the violations addressed herein.
18 On **December 21, 2022**, Plaintiff sent a letter, by certified mail, return receipt requested, to the
19 LWDA and Defendant setting forth the facts and theories of the violations alleged, as
20 proscribed by Labor Code § 2698 et seq. A copy of that letter is attached hereto as Exhibit A.

21 111. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by either
22 Plaintiff from the LWDA within 65 calendar days of the mailing of Plaintiffs' PAGA Notice
23 Letter to the LWDA and sending it by certified mail to Defendant. Plaintiffs may therefore
24 commence this action to seek penalties pursuant to Labor Code § 2698 et seq.

25 112. Wherefore, Plaintiff and all aggrieved employees request relief as described
26 below.

27 **ATTORNEY'S FEES AND COSTS**

28 113. Plaintiff is entitled to fees and costs, pursuant to California law, including, without
limitation, *Code of Civil Procedure* § 1021.5 and *Labor Code* §§ 226 and 1194. Further, enforcement

1 of statutory provisions enacted to protect workers and to ensure prompt payment of wages due
2 employees is a fundamental public interest in California. Consequently, Plaintiff's success in this
3 action will result in the enforcement of important rights affecting the public interest and will confer a
4 significant benefit upon the public.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff and members of the Class pray for judgment as follows:

- 7 1. An order that the action be certified as a class action;
- 8 2. An order that Plaintiff be appointed class representatives;
- 9 3. An order that counsel for Plaintiff be appointed class counsel;
- 10 4. For nominal damages;
- 11 5. For compensatory damages;
- 12 6. For restitution of all monies due to Plaintiff and members of the Class, and disgorged
13 profits from the unlawful business practice of Defendants;
- 14 7. For penalties pursuant to Labor Code §§ 206, 210, 226, 226(e), 226.3, 226.7, 512, 558,
15 and 1194;
- 16 8. For waiting time penalties pursuant to Labor Code § 203;
- 17 9. For civil penalties pursuant to Labor Code §§ 2692 and 2699, in the amount of
18 \$100.00 for the first violation per employee per pay period, and \$200.00 for
19 subsequent violations per employee per pay period to be allocated 75% to the LWDA
20 and 25% to the affected employees;
- 21 10. For interest accrued to date;
- 22 11. For costs of suit and expenses pursuant to Labor Code §§ 226 and 1194;
- 23 12. For reasonable attorneys' fees pursuant to Labor Code §§ 226, and 1194; and,
- 24 13. For all such other and further relief that the Court may deem just and proper.

25 **DEMAND FOR JURY TRIAL**

26 114. Plaintiff, on behalf of herself and all others similarly situated, demand a trial by jury
27 for himself and all Class members on all claims so triable.
28

1 Dated: September 12, 2023

By: Todd M. Friedman

2 Law Offices of Todd M. Friedman, P.C.

3 Todd M. Friedman, Esq.

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Exhibit A

Law Offices of Todd M. Friedman, P.C.

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Woodland Hills, CA 91364
www.ToddFLaw.com

E-mail: tfriedman@toddfllaw.com

Writer licensed in:
California
Illinois
Pennsylvania

December 21, 2022

Via Online Submission

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
800 Capitol Mall
Sacramento, CA 95814
<https://dir.tfaforms.net/128>

Subject: *Louise Furman v. The Lemos Family Farm, Inc.*

Dear PAGA Administrator:

This office represents Ms. Louise Furman in connection with her claims under the California Labor Code and sends this letter in compliance with the notice requirements of the Private Attorneys General Act of 2004 ("PAGA"). Lab. Code § 2699.3. Ms. Furman was an employee of The Lemos Family Farm, Inc. ("Lemos") in California.

The employer may be contacted directly at:

The Lemos Family Farm, Inc.
c/o Bob Lemos
12320 San Mateo Road
Half Moon Bay, CA 94019

Ms. Furman intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the Labor Code, which are recoverable under PAGA. Ms. Furman seeks relief on behalf of herself, the State of California, and other individuals who were employed by Lemos in California as non-exempt employees ("Aggrieved Employees").

Ms. Furman worked for Lemos as a non-exempt, hourly-paid seasonal employee at Lemos's amusement park. During her employment, Ms. Furman typically worked eight (8) hours per day, five (5) to six (6) days per week, from approximately 8:00 a.m. to 5:00. Her job duties varied, but included selling entry tickets to visitors to the park, managing the parking lot, working the concession stand, and operating several of the rides and attractions, such as the slide and petting zoo.

Lemos committed one or more of the following Labor Code violations against Ms. Furman, making her an Aggrieved Employee pursuant to Labor Code section 2699(c):¹

¹ These facts, theories, and claims are based on Ms. Furman's experience and counsel's review of the records currently available regarding Ms. Furman's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims of which the Aggrieved Employee was not initially aware (because she was not aware of the applicable law, Aggrieved Employees were

Lemos's Company-Wide and Uniform Payroll and HR Practices

Lemos is a privately held corporation formed under California law in 2009 that operates, among other things, a farm-themed amusement park in Half Moon Bay, California. Lemos is registered to do business in California and maintains its principle place of business in Half Moon Bay, California. On information and belief, Lemos conducts all Human Resources ("HR") functions from its Half Moon Bay location, and implements uniform, standardized policies and practices affecting all its non-exempt employees in California, including Ms. Furman and other Aggrieved Employees. At all relevant times, Lemos issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all Aggrieved Employees, including Ms. Furman. The policies and procedures presently believed to cause violations of the Labor Code are identified below.

On information and belief, Lemos contracts with ADP, which processes payroll for all Aggrieved Employees, including Ms. Furman, and issues uniformly formatted wage statements. Lemos processes payroll in the same manner, and the same methods and formulas are used to calculate wages due, for all Aggrieved Employees.

Violation of California Labor Code §§ 510 and 1198

Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable Wage Order(s) further provide that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

Lemos willfully failed to pay all overtime wages owed to Ms. Furman other Aggrieved Employees. At all relevant times, Ms. Furman and other Aggrieved Employees were not paid overtime wages for all hours they worked in excess of eight (8) in a day, in excess of twelve (12) in a day, and/or in excess of forty (40) in a week, because Lemos only paid them their base hourly rate for these hours.

Based on the foregoing, Ms. Furman and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198

Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined by the applicable wage order as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

misinformed, or the employer effectively hid violations). Thus, Ms. Furman reserves the right to supplement this letter if she becomes aware of additional facts, theories, and/or claims after this submission.

Ms. Furman and other Aggrieved Employees live on Lemos's property, and, every workday, are required to walk from their residences to the amusement park area to clock in. This walk takes approximately ten (10) minutes. Ms. Furman and other Aggrieved Employees are not compensated for this time, despite being under the control of Lemos.

Lemos thus failed regularly to pay at least minimum wages to Ms. Furman and other Aggrieved Employees for all the hours they worked, including for overtime hours, in violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Furman and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), and 1198

Labor Code sections 226.7, 512(a) and 1198 and the applicable IWC Wage Order require employers to provide meal and rest breaks and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable Wage Order(s), an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order(s) also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable Wage Order, which provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3½) hours.

To comply with Labor Code section 226.7 and the applicable IWC Wage Order(s), an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

Lemos maintained and implemented, on a company-wide basis, a non-compliant break policy that prevented Aggrieved Employees, including Ms. Furman, from taking compliant meal periods. As a result of Lemos's practices and/or policies, Ms. Furman and other Aggrieved Employees were regularly required to continue to perform their duties when they were due for breaks, including both meal and rest periods. Ms. Furman and other Aggrieved Employees thus had to work through all or

part of their breaks, were interrupted by work while clocked out for meal periods, and/or were prevented from taking timely meal periods.

In addition, Lemos's company-wide scheduling policies prevented Aggrieved Employees, including Ms. Furman, from being relieved of all duty during their rest periods. Ms. Furman and other Aggrieved Employees had no choice but to work through rest periods, which were not scheduled, in order to perform and complete their duties each workday. As a result, Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all ten (10) minute rest periods to which they were entitled.

Because Lemos failed to provide all meal and rest periods, in violation of Labor Code sections 226.7, 512, and 1198, Ms. Furman and other Aggrieved Employees are entitled to penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and 2699(f)-(g).

Violation of California Labor Code § 221

Labor Code section 221 states that "[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

Lemos's failure to pay Aggrieved Employees for all time worked and/or premium wages for non-compliant meal and/or rest periods constitutes the forfeiture of wages, which were then diverted back to Lemos. Such conduct is unlawful under Labor Code sections 221. Aggrieved Employees, including Ms. Furman, are thus entitled to recover penalties, attorneys' fees, costs, and interest thereon pursuant to Labor Code sections 226(e), 226.3, 558, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198

Labor Code section 226(a) requires employers to furnish and maintain true, accurate, and complete wage statements and employment records. At all relevant times, Lemos failed to provide Ms. Furman and other Aggrieved Employees with compliant wage statements. Labor Code section 226(e) provides that if an employer fails to provide an employee with properly itemized wages statements as set forth in 226(a), the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Labor Code section 226.3 provides further that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

Lemos has knowingly and intentionally provided Aggrieved Employees, including Ms. Furman, with uniformly incomplete and inaccurate wage statements in violation of Labor Code section 226(a). The wage statement deficiencies include failing to state all hours worked as a result of not recording all such hours. Additionally, because it did not properly pay overtime rates of pay, Lemos did not provide the correct amount of gross wages earned, in violation of section 226(a)(1), or the correct amount of net wages earned, in violation of section 226(a)(5). Lemos thus also failed to provide the correct hourly rates in effect during each pay period for overtime and for meal and rest period premium wages, in violation of section 226(a)(9).

Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). At all relevant times, in violation of Labor Code section 1174(d), Lemos willfully failed to maintain accurate payroll records for Ms. Furman and other Aggrieved Employees that show the correct number of hours worked and the wages paid thereto as a result of failing to record all such hours, the correct rates of pay for all wages owed, and the correct totals for the gross and net wages earned.

Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, Lemos failed to keep accurate records of meal periods for Ms. Furman and other Aggrieved Employees, in violation of section 1198.

Because Lemos failed to provide accurate itemized wage statements, Aggrieved Employees have been prevented from verifying, solely from such wage statements, that they were paid correctly and in full. Instead, Ms. Furman and other Aggrieved Employees must reconstruct time records to confirm whether they were paid correctly, including the extent of underpayment, thereby causing them injury.

Aggrieved Employees, including Ms. Furman, are thus entitled to recover penalties, attorneys’ fees, costs, and interest thereon pursuant to Labor Code sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204

Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, Lemos failed to pay Aggrieved Employees, including Ms. Furman, all wages due, including overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by Labor Code section 204.

Ms. Furman and other Aggrieved Employees are thus entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 210, 558, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203

Labor Code sections 201, 202, and 203 provide that, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that, if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Lemos willfully failed to pay Ms. Furman and other Aggrieved Employees who are no longer employed by Lemos all their earned wages, including overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge or within seventy-two (72) hours of their leaving Lemos's employ, in violation of Labor Code sections 201, 202, and 203.

Ms. Furman and other Aggrieved Employees are thus entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Penalties Under Labor Code § 558(a)

Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." Lemos, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Furman's and other Aggrieved Employees' rights by violating various sections of the Labor Code.

Accordingly, pursuant to PAGA, in particular Labor Code sections 2699(a), 2699.3(a) and (c), and 2699.5, Ms. Furman, acting in the public interest as a private Attorney General, seeks assessment and collection of civil penalties for herself, all other Aggrieved Employees, and the State of California against Lemos for violations of Labor Code sections 201, 202, 203, 204, 221, 226(a), 226(e), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

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Furman v. Lemos Family Farms, Inc.

December 21, 2022

Page 7 of 10

On behalf of all Aggrieved Employees, Ms. Furman seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter.

Yours Truly,

A handwritten signature in dark ink, appearing to read 'Todd M. Friedman', with a long horizontal flourish extending to the right.

Todd M. Friedman, Esq.

Cc (Via Certified Mail):

The Lemos Family Farm, Inc.
c/o Bob Lemos
12320 San Mateo Road
Half Moon Bay, CA 94019