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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

LUIS LOPEZ SANTOS; MAURILIO
SANTIAGO GARCIA; as individuals, on
behalf of themselves and others similarly
situated,

PLAINTIFFS,

v.

WEST COAST BERRY FARMS, LLC; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 23CV01149

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Compliant Rest Breaks Pursuant to Labor Code § 226.7
3. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions Code § 17200
7. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiffs LUIS LOPEZ SANTOS; MAURILIO SANTIAGO GARCIA, as individuals, on
2 behalf of themselves and all others similarly situated, (“Plaintiffs”) and on behalf of the people of
3 the State of California and as an “aggrieved employee” under Labor Code Private Attorneys
4 General Act of 2004, §2699, *et seq.* (hereafter “PAGA”), complain of Defendant WEST COAST
5 BERRY FARMS, LLC (“Defendant”) and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382 and Labor Code §2699, *et seq.*, on behalf of Plaintiffs and a Proposed Class defined as:

10 All non-exempt employees who are employed or have been
11 employed by WEST COAST BERRY FARMS, LLC, in the State
12 of California who worked one of more pay periods since four (4)
13 years prior to the filing of this action to the present plus any
14 additional time during which the statutes of limitation for the causes
of action herein were tolled pursuant to Emergency Rule 9 of the
California Rules of Court, the ‘Emergency Rules Related to
COVID-19. (“Proposed Class”)

15 2. Any limitations period referenced in this complaint is extended pursuant to
16 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
17 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
18 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
19 “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
20 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
21 relevant time period or statute of limitations referenced in this complaint is extended into the past
22 by the number of days in which this tolling was in effect.

23 3. For at least four (4) years prior to the filing of this action continuing to the present,
24 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class
25 Members at the appropriate rate of pay. Plaintiffs and the Proposed Class were not properly
26 compensated for all hours worked because Defendant failed to pay Plaintiffs and the Proposed
27 Class for each and every hour worked. Plaintiffs and the Proposed Class routinely worked “off
28 the clock” and performed compensable activities before working each shift and during each

1 scheduled shift for which no pay was provided. Plaintiffs and the Proposed Class are not paid any
2 wages for these pre-shift activities and time spent waiting during their scheduled shifts. Further,
3 Plaintiffs and the Proposed Class are not properly compensated for their time spent traveling from
4 field to field. This time spent was “clocked out” and as such, Plaintiffs and the Proposed Class are
5 not compensated for the time worked before and during their working shifts even though this time
6 is compensable.

7 4. For at least four (4) years prior to the filing of this action and continuing to the
8 present, Defendant failed to apprise Plaintiffs and the Proposed Class of their rights associated
9 with rest periods and failed to provide compliant rest periods. Defendant failed to provide
10 Plaintiffs and the Proposed Class with rest breaks of not less than ten (10) minutes per four (4)
11 hour work period, or major fraction thereof. Instead, Defendant required Plaintiffs and the
12 Proposed Class to forgo at least one of their rest breaks on a regular and consistent basis during
13 the relevant time period. Moreover, Plaintiffs and the Proposed Class were not compensated with
14 one (1) hour of wages at the regular rate of compensation for each missed rest period as described
15 above and as required by Labor Code § 226.7. On the rare occasion, if any, that Defendant paid
16 rest period premiums, Defendant has had a consistent policy of improperly paying rest period
17 premiums at the base rate and not blended rate in violation of California rest period laws.

18 5. For at least four (4) years prior to the filing of this action and continuing to the
19 present, Defendant has failed to reimburse Plaintiffs and the Proposed Class the cost of using their
20 personal vehicles and purchasing specialized tools and/or equipment necessary to perform their
21 job duties. The work performed by Plaintiffs and the Proposed Class necessitated the use of
22 vehicles and tools/equipment. These vehicles and tools/equipment were not provided by
23 Defendant. As a result, Plaintiffs and the Proposed Class purchased these tools and used their own
24 vehicles and Defendant never reimbursed them for the costs.

25 6. For at least one (1) year prior to the filing of this action continuing to the present,
26 Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 14-
27 2001 and Labor Code § 226(a) by failing to issue accurate itemized wage statements reporting
28 total hours worked by Plaintiffs and the Proposed Class and the appropriate rate of pay.

1 State of California or is subject to adjudication in the courts of the State of California.

2 12. This Court has personal jurisdiction over Defendant because Defendant has caused
3 injuries in the County of Santa Barbara and the State of California through their acts, and by their
4 violation of the California Labor Code, California state common law, and California Business &
5 Professions Code § 17200, *et seq.*

6 13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
7 Civil Procedure § 395. Defendant operates within California and does business within Santa
8 Barbara County. The unlawful acts alleged herein have a direct effect on Plaintiffs and all
9 Proposed Class Members within the State of California and the county of Santa Barbara.

10 14. This case should be classified as complex according to Rule 3.400 of the California
11 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
12 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
13 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
14 require substantial post judgment judicial supervision.

15 15. Plaintiffs file this amended complaint adding a claim for penalties under Labor
16 Code §2699, *et seq.* as a matter of right. (*see* Labor Code § 2699.3(a)(2)(C)).

17 **III.**

18 **PARTIES**

19 **A. PLAINTIFFS**

20 16. Plaintiffs LUIS LOPEZ SANTOS and MAURILIO SANTIAGO GARCIA are
21 residents of California.

22 17. Plaintiffs and all Proposed Class members, were regularly required to:

- 23 a. Work without being paid for all hours at the appropriate overtime rate;
- 24 b. Work without being provided compliant rest periods;
- 25 c. Work without being reimbursed for their out of pocket expenses;
- 26 d. Work without Defendant providing accurate itemized wage statements.

27 18. Defendant willfully failed to compensate Plaintiffs and all Proposed Class members
28 for wages at the termination of their employment with Defendant.

1 19. As a result of this conduct, Defendant has engaged in unfair competition and
2 unlawful business practices.

3 20. Plaintiffs and all aggrieved employees as defined in their notice letter to the LWDA
4 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code
5 §2699(c).)

6 **B. DEFENDANTS**

7 21. Defendant WEST COAST BERRY FARMS, LLC is believed to be a California
8 corporation operating within the State of California. Defendant’s corporate address, according to
9 the Secretary of State website¹ is believed to be 4324 E Vineyard Ave Oxnard, CA 93036. Upon
10 information and belief, Defendant employed Plaintiffs and similarly situated persons as hourly
11 employees within California. Defendant has done and does business throughout the State of
12 California.

13 22. The true names and capacities, whether individual, corporate, associate, or
14 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
15 Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
16 § 474. Plaintiffs are informed and believes, and based thereon alleges, that each of the Defendants
17 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
18 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
19 capacities of the Defendants designated hereinafter as DOES when such identities become known.

20 23. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
21 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
22 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
23 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
24 employer and/or joint employer of Plaintiffs and the Proposed Class members.

25 24. Furthermore, Defendants acted in all respects as the employers or joint employers
26 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
27

28 ¹ <https://bizfileonline.sos.ca.gov/search/business>

1 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
2 engaged, thereby creating a common law employment relationship, with the Proposed Class.
3 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

4 **IV.**

5 **FACTUAL BACKGROUND**

6 25. Plaintiffs and the Proposed Class are, and at all times pertinent hereto, have been
7 classified as non-exempt employees by Defendant. Defendant hires employees who work as
8 hourly employees who are paid on an hourly basis. Plaintiffs and the Proposed Class are also
9 seasonal agricultural workers that were paid on a piece rate for work picking fruits and putting
10 fruit-related products together.

11 26. Upon information and belief, Plaintiffs and the Proposed Class are covered by
12 California Industrial Welfare Commission Occupational Wage Order No. 14-2001 (Title 8 Cal.
13 Code of Regs. § 11140).

14 27. From at least four (4) years prior to the filing of this action continuing to the present,
15 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class
16 Members at the appropriate rate of pay, as follows:

17 a. Plaintiffs and the Proposed Class were not properly compensated for all
18 hours worked because Defendant failed to pay Plaintiffs and the Proposed Class for each and every
19 hour worked. Plaintiffs and the Proposed Class routinely worked “off the clock” and performed
20 compensable activities before working each shift for which no pay was provided. Plaintiffs and
21 the Proposed Class are not paid any wages for these pre-shift activities. Plaintiffs and the Proposed
22 Class were not properly compensated for all hours worked at the beginning of their shift due to the
23 fact that Defendant required Plaintiffs and the Proposed Class to report to the job site at least 5-10
24 minutes before the start of each scheduled shift. Plaintiffs and the Proposed Class often spent this
25 time preparing for their scheduled shifts by washing buckets and adjusting their personal vehicles
26 to carry products for work purposes. Plaintiffs and the Proposed Class were not provided
27 compensation for this time despite Defendant’s foremen requiring its employees to report to the
28 job site and perform tasks before the employees’ start time. This time spent was “clocked out” and

1 as such, Plaintiffs and the Proposed Class are not compensated for this time worked even though
2 this time is compensable. Further, whenever the conditions of Defendant's job sites are too wet,
3 Plaintiffs and the Proposed Class are required to wait to perform their job duties. Despite
4 Defendant having required Plaintiffs and the Proposed Class to "sign in" to work, Plaintiffs and
5 the Proposed Class were not paid despite Plaintiffs and the Proposed Class being on the clock.

6 b. Additionally, Defendant had a consistent policy of failing to compensate
7 Plaintiffs and the Proposed Class for their time spent traveling from field to field. Plaintiffs and
8 the Proposed Class were not properly compensated for their travel time between fields, despite
9 performing compensable activities. This time was spent "clocked out" and as such, Plaintiffs and
10 the Proposed Class are not compensated for this time worked even though this time is
11 compensable.

12 28. On a regular and consistent basis, Plaintiffs and the Proposed Class were not
13 provided with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major
14 fraction thereof. Instead, Defendant required Plaintiffs and the Proposed Class to forgo at least
15 one of their rest breaks on a regular and consistent basis during the relevant time period.
16 Specifically, Plaintiffs and the Proposed Class have been required to work four-hour increments
17 (or major fractions thereof) without being provided with compliant second ten (10) minute rest
18 periods. Plaintiffs and the Proposed Class were not compensated with one (1) hour of wages at the
19 regular rate of compensation for each missed rest period as described above and as required by
20 Labor Code § 226.7. On the rare occasion, if any, that Defendant paid rest period premiums,
21 Defendant has had a consistent policy of improperly paying rest period premiums at the base rate
22 and not blended rate in violation of California law. Additionally, Defendant failed to maintain a
23 policy of informing Plaintiffs and the Proposed Class of these rights.

24 29. On a regular and consistent basis, Plaintiffs and the Proposed Class have not been
25 properly reimbursed expenses associated with the cost of using their personal vehicles and
26 purchasing tools/equipment necessary for the completion of their job duties.

27 30. For at least one (1) year prior to the filing of this action continuing to the present,
28 Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order 14-

2001 and Labor Code § 226(a) by failing to issue accurate itemized wage statements.

31. Defendant willfully failed to pay wages and compensation, when Plaintiffs and all Proposed Class members quit or were discharged. This failure was willful, without legal justification, and interfered with Plaintiffs' and the Proposed Class members' rights.

32. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

V.

CLASS ACTION ALLEGATIONS

33. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiffs seeks to represent a proposed class composed of and defined as follows:

All non-exempt employees who are employed or have been employed by WEST COAST BERRY FARMS, LLC, in the State of California who worked one of more pay periods since four (4) years prior to the filing of this action to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the 'Emergency Rules Related to COVID-19. ("Proposed Class")

34. Plaintiffs reserve the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

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

A. NUMEROSITY

36. The potential members of the Proposed Class as defined are so numerous that joinder of all the members of the Proposed Class is impracticable. While the precise number of Proposed Class members has not been determined at this time, Plaintiffs are informed and believe that Defendant currently employ, and during the relevant time periods employed over 50 members of the Proposed Class.

37. Plaintiffs allege that Defendant's employment records would provide information

as to the number and location of all Proposed Class members. Joinder of all members of the Proposed Class is not practicable.

B. COMMONALITY

38. There are questions of law and fact common to the Proposed Class that predominate over any questions affecting only individual Proposed Class members. These common questions of law and fact include, without limitation:

a. Whether Defendant failed to pay wages and/or overtime compensation as required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, 1194.2, and 1199;

b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 14-2001 or other applicable IWC Wage Orders by failing to provide required rest periods throughout the term of employment and/or failing to compensate Proposed Class members one (1) hour of wages at their regular rate of compensation in lieu of rest periods;

c. Whether Defendants violated Labor Code § 2802 and/or Wage Order 14-2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the cost of tools;

d. Whether Defendants violated Labor Code § 226(a) and Wage Order 14-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11140 by failing to provide an accurate itemized wage statements that accurately report the total hours worked and the applicable rates, for Plaintiffs and the members of the Proposed Class;

e. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that any Proposed Class member's employment with Defendant terminated;

f. Whether Defendant violated § 17200, *et seq.* of the Business & Professions Code by engaging in the acts previously alleged; and

g. Whether Plaintiffs and the members of the Proposed Class are entitled to equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

h. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the acts alleged herein.

1 **C. TYPICALITY**

2 39. The claims of Plaintiffs are typical of the claims of the Proposed Class. Plaintiffs
3 and all members of the Proposed Class sustained injuries and damages arising out of and caused
4 by Defendant's common course of conduct in violation of laws, regulations that have the force and
5 effect of law, and statutes as alleged herein.

6 **D. ADEQUACY OF REPRESENTATION**

7 40. Plaintiffs will fairly and adequately represent and protect the interests of the
8 members of the proposed Class.

9 41. Counsel who represents Plaintiffs and the Proposed Class are competent and
10 experienced in litigating large employment class actions.

11 **E. SUPERIORITY OF CLASS ACTION**

12 42. A class action is superior to other available means for the fair and efficient
13 adjudication of this controversy. Individual joinder of all Proposed Class members is not
14 practicable, and questions of law and fact common to the Proposed Class predominate over any
15 questions affecting only individual members of the Proposed Class. Each member of the Proposed
16 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
17 practice of failing to pay all wages due, failing to provide compliant rest periods, failing to
18 reimburse expenses, failing to provide accurate itemized wage statements, and failing to pay all
19 wages upon resignation or termination.

20 43. Class action treatment will allow those similarly situated persons to litigate their
21 claims in the manner that is most efficient and economical for the parties and the judicial system.
22 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of
23 this action that would preclude its maintenance as a class action.

24 **VI.**

25 **FIRST CAUSE OF ACTION**

26 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

27 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

28 **LABOR CODE §§ 510, 1194, 1194.2, AND 1199**

1 44. Plaintiffs, on behalf of themselves and the Proposed Class, realleges and
2 incorporates by reference all previous paragraphs.

3 45. Labor Code §§ 510, 1194 and 1199 require an employer to compensate its
4 employees at the rate of no less than one and one-half times the regular rate of pay for any work
5 in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

6 46. Here, Defendant has had a consistent policy of failing to pay wages and/or overtime
7 to Plaintiff and the Proposed Class. Plaintiff and the Proposed Class were not properly
8 compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week.

9 47. Plaintiffs and the Proposed Class were not properly compensated for all hours
10 worked because Defendant failed to pay Plaintiffs and the Proposed Class for each and every hour
11 worked. Plaintiffs and the Proposed Class routinely worked “off the clock” and performed
12 compensable activities before working each shift for which no pay was provided. Plaintiffs and
13 the Proposed Class are not paid any wages for these pre-shift activities. Plaintiffs and the Proposed
14 Class were not properly compensated for all hours worked at the beginning of their shift due to the
15 fact that Defendant required Plaintiffs and the Proposed Class to report to the job site at least 5-10
16 minutes before the start of each scheduled shift. Plaintiffs and the Proposed Class often spent this
17 time preparing for their scheduled shifts by washing buckets and adjusting their personal vehicles
18 to carry products for work purposes. Plaintiffs and the Proposed Class were not provided
19 compensation for this time despite Defendant’s foremen requiring its employees to report to the
20 job site and perform tasks before the employees’ start time. This time spent was “clocked out” and
21 as such, Plaintiffs and the Proposed Class are not compensated for this time worked even though
22 this time is compensable.

23 48. Whenever the conditions of Defendant’s job sites are too wet, Plaintiffs and the
24 Proposed Class are required to wait to perform their job duties. Despite Defendant having required
25 Plaintiffs and the Proposed Class to “sign in” to work, Plaintiffs and the Proposed Class were not
26 paid despite Plaintiffs and the Proposed Class being on the clock.

27 49. Defendant also had a consistent policy of failing to compensate Plaintiffs and the
28 Proposed Class for their time spent traveling from field to field. Plaintiffs and the Proposed Class

1 were not properly compensated for their travel time between fields, despite performing
2 compensable activities. This time was spent “clocked out” and as such, Plaintiffs and the Proposed
3 Class are not compensated for this time worked even though this time is compensable

4 50. By their policy of requiring Plaintiffs and members of the Proposed Class to work
5 in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
6 compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully
7 violated the provisions of Labor Code §§ 510, 1194, 1194.2, and 1199.

8 51. As a result of the unlawful acts of Defendant, Plaintiffs and the Proposed Class
9 Members have been deprived of wages and/or overtime in amounts to be determined at trial, and
10 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and
11 costs.

12 **VII.**

13 **SECOND CAUSE OF ACTION**

14 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

15 **FAILURE TO PROVIDE REST PERIODS PURSUANT TO**

16 **LABOR CODE § 226.7**

17 52. Plaintiffs, on behalf of themselves and the Proposed Class, realleges and
18 incorporates by reference all previous paragraphs.

19 53. Labor Code § 226.7 and IWC Wage Order 14 require an employer to provide rest
20 periods or to pay an additional one (1) hour of wages for each rest period the employer fails to
21 provide. Employees are entitled to a ten (10) minute rest break for every four (4) hours worked or
22 major fraction thereof.

23 54. Defendant failed to maintain a policy informing Plaintiffs and the Proposed Class
24 of this right.

25 55. Plaintiffs and the Proposed Class consistently worked shifts over three and one-half
26 hours.

27 56. On a regular and consistent basis, Defendant failed to provide Plaintiffs and the
28 Proposed Class with rest breaks of not less than ten (10) minutes per four (4) hour work period or

1 major fraction thereof during the relevant time period. Instead, Defendant required Plaintiffs and
2 the Proposed Class to forgo at least one of their rest breaks on a regular and consistent basis during
3 the relevant time period. Specifically, Plaintiffs and the Proposed Class have been required to
4 work four-hour increments (or major fractions thereof) without being provided with compliant
5 second ten (10) minute rest periods.

6 57. Plaintiffs and the Proposed Class were not compensated with one (1) hour of wages
7 at the regular rate of compensation for each missed rest period as described above and as required
8 by Labor Code § 226.7. On the rare occasion if any that Defendant paid rest period premiums,
9 Defendant has had a consistent policy of improperly paying rest period premiums at the base rate
10 and not blended rate.

11 58. Defendant's policies and practices as alleged herein violate Labor Code § 226.7
12 and are inconsistent with the California Supreme Court's recent decision in *Ferra v. Loews*
13 *Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) ("we hold that the term 'regular rate of
14 compensation' in section 226.7(c) has the same meaning of regular rate of pay' in section 510(a)
15 and encompass not only hourly wages, but all nondiscretionary payments for work performed by
16 the employee.").

17 59. Pursuant to Labor Code § 226.7, Plaintiffs and the Proposed Class are entitled to
18 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per
19 missed rest break, per day in a sum to be proven at trial.

20 VIII.

21 THIRD CAUSE OF ACTION

22 PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS

23 FAILURE TO REIMBURSE EXPENSES PURSUANT TO

24 LABOR CODE § 2802

25 60. Plaintiffs, on behalf of themselves and the Proposed Class, realleges and
26 incorporates by reference all previous paragraphs.

27 61. Labor Code § 2802 requires employers to indemnify employees for all necessary
28 expenditures incurred by employees in the discharge of their duties.

1 accurately report total hours worked, accurately report appropriate rates of pay and the
2 corresponding number of hours worked at each hourly rate. (Labor Code §§ 226(a)(2), and (9).)

3 69. Plaintiffs and the Proposed Class are issued wage statements that do not include the
4 total hours worked by the employee.

5 70. Plaintiffs and the Proposed Class are issued wage statements that do not include all
6 applicable hourly rates in effect during the pay period and the corresponding number of hours
7 worked at each hourly rate by the employee.

8 71. Defendant's failure to provide accurate itemized wages statements according to
9 Labor Code § 226(a) was all done on a regular and consistent basis.

10 72. An employee suffering injury as a result of a knowing and intentional failure by an
11 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
12 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
13 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
14 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
15 reasonable attorneys' fees

16 **X.**

17 **FIFTH CAUSE OF ACTION**

18 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

19 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

20 73. Plaintiffs, on behalf of themselves and the Proposed Class, realleges and
21 incorporates by reference all previous paragraphs.

22 74. Numerous members of the Proposed Class including the Plaintiffs are no longer
23 employed by Defendant. They were either fired or quit Defendant's employ.

24 75. Defendant's failure to pay wages, as alleged above was willful in that Defendant
25 knew wages to be due but failed to pay them, thus entitling Plaintiffs and the Proposed Class to
26 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
27 penalty until paid for a period of up to thirty (30) days from the time they were due.

28 76. Defendant has failed to pay Plaintiffs and others a sum certain at the time of

1 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
2 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiffs and
3 the Proposed Class are entitled to a penalty in the amount of Plaintiffs' and the Proposed Class
4 members' daily wage multiplied by thirty (30) days.

5 **XI.**

6 **SIXTH CAUSE OF ACTION**

7 **PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS**

8 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

9 77. Plaintiffs, on behalf of themselves and the Proposed Class, realleges and
10 incorporates by reference all previous paragraphs.

11 78. This is a Class Action for Unfair Business Practices. Plaintiffs, on behalf of
12 themselves, on behalf of the general public, and on behalf of the Proposed Class, bring this claim
13 pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in
14 this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiffs, the general
15 public, and the Proposed Class. Plaintiffs seeks to enforce important rights affecting the public
16 interest within the meaning of Code of Civil Procedure § 1021.5.

17 79. Plaintiffs are each considered a "person" within the meaning of Business &
18 Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive
19 relief, restitution, and other appropriate equitable relief.

20 80. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
21 practices.

22 81. California's wage and hour laws express fundamental public policies. Providing
23 employees with proper wages and compensation are fundamental public policies of this State and
24 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
25 vigorously minimum labor standards, to ensure that employees are not required or permitted to
26 work under substandard and unlawful conditions, and to protect law-abiding employers and their
27 employees from competitors who lower their costs by failing to comply with minimum labor
28 standards.

82. Defendant has violated statutes and public policies as alleged herein. Through the conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiffs, and all persons similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all employees under law.

83. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in violation of § 17200, *et seq.* of the Business & Professions Code.

84. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise of reasonable care, should have known that the conduct was unlawful. As such it is a violation of § 17200, *et seq.* of the Business & Professions Code.

85. As a proximate result of the above-mentioned acts of Defendant, Plaintiffs and others similarly situated have been damaged in a sum as may be proven.

86. Unless restrained, Defendant will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiffs and members of the proposed Class the money Defendant has unlawfully failed to pay.

XII.

SEVENTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

87. Plaintiffs, on behalf of themselves and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

88. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code §2699, *et seq.* use of Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199, and 2802; Wage Order 14-2001; and

1 California Code of Regulations, Title 8, Section 11140, which call for civil penalties.

2 89. Plaintiffs bring this representative action on behalf of themselves and the State of
3 California as well as on behalf of a group of aggrieved employees defined as: All non-exempt
4 employees who are employed or have been employed by West Coast Berry Farms, LLC, in the
5 State of California who worked one or more pay periods since one (1) year prior to the date of this
6 letter and continuing to the present plus any additional time during which the statutes of limitation
7 for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules
8 of Court, the ‘Emergency Rules Related to COVID-19.. (“aggrieved employees”)

9 90. In addition to the wage, rest period, itemized wage statement, and penalty claims
10 alleged in detail above, Plaintiffs also allege a record keeping violation as the basis for a PAGA
11 claim on behalf of the aggrieved employees. Defendant did not maintain accurate records of
12 information with respect to, among other things, when Plaintiffs and the aggrieved employees
13 began and ended each work shift and the total hours worked.

14 91. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
15 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
16 present, Defendant has violated IWC Wage Order 14, paragraph 7(A) with respect to Plaintiff and
17 all aggrieved employees.

18 92. IWC Wage Order 14, paragraph 7(A) provides that every employer shall keep
19 accurate information with respect to each employee including time records showing when the
20 employee begins and ends each work period and total hours worked in the payroll period. When a
21 piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan
22 formula shall be provided to employees.

23 93. Defendant violated IWC Wage Order 14-2001 by failing to maintain accurate
24 records of accurate records for Plaintiffs and other employees pursuant to Industrial Welfare
25 Commission Wage Order 14-2001.

26 94. Defendant’s violation of IWC Wage Order 4-2001 was all done on a regular and
27 consistent basis.

28 95. As a result of the acts alleged above, Plaintiffs, on behalf of themselves and all

1 other aggrieved employees, seeks penalties under Labor Code section 2699, et seq. because of
2 Defendant's violation of IWC Wage Order 14-2001, for which a civil penalty applies under PAGA.

3 96. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §
4 2699, *et seq.* because of Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510,
5 1194, 1194.2, 1199, and 2802, and Wage Order 14-200, which call for civil penalties.

6 97. For each such penalty, Plaintiffs and the aggrieved employees are entitled to
7 penalties in an amount to be shown at trial, subject to the following formula:

8 a. \$100 for the initial violation per employee per pay period.

9 b. \$200 for each subsequent violation per employee per pay period.

10 98. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
11 twenty-five percent (25%) to the affected employees.

12 99. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
13 LWDA² and mailed a letter by certified mail to Defendant's entity address, which is 4324 E.
14 Vineyard Ave, Oxnard, CA 91761, as proscribed by the Code on December 5, 2022, describing
15 Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194,
16 1194.2, 1199, and 2802, and IWC Wage Order 14-2001. (*see* Exhibit "1.") Plaintiff also obtained
17 an e-filing confirmation from the LWDA confirming receipt of the notice (*see* Exhibit "2").

18 100. Plaintiff obtained an e-filing confirmation from the LWDA confirming receipt of
19 the notice (see Exhibit "2").

20 101. As no letter evidencing the LWDA's intention to investigate was received by
21 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
22 action as though the LWDA had not chosen to investigate pursuant to Labor Code
23 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
24 Amended Class and Representative Action Complaint immediately.

25 **RELIEF REQUESTED**

26 **WHEREFORE**, Plaintiffs pray for the following relief:

27 ² Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

1 1. For compensatory damages in the amount of unpaid wages and/or overtime not paid
2 to Plaintiffs and each Proposed Class Member from at least four (4) years prior to the filing of this
3 action to the present as may be proven;

4 2. For compensatory damages in the amount of Plaintiffs' and each Proposed Class
5 members' hourly wage at the appropriate regular rate of compensation for each rest period that
6 Defendant failed to provide from at least four (4) years prior to the filing of this action to the
7 present as may be proven;

8 3. For compensatory damages in the amount of Plaintiff's and each Proposed Class
9 Members' unreimbursed out of pocket expenses as a requirement of employment;

10 4. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
11 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
12 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
13 an aggregate penalty of four thousand dollars (\$4,000);

14 5. For penalties pursuant to Labor Code § 203 for all employees who were terminated
15 or resigned equal to their daily wage times thirty (30) days;

16 6. An award of prejudgment and post judgment interest;

17 7. An order enjoining Defendant and its agents, servants, and employees, and all
18 persons acting under, in concert with, or for it from providing Plaintiffs with proper wages and/or
19 overtime, rest periods, unreimbursed business expenses, accurate itemized wage statements, and
20 wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510,
21 1194, 1194.2, 1199, 2802, and IWC 14-2001;

22 8. For restitution for unfair competition pursuant to Business & Professions Code
23 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

24 9. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
25 Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199, 2802, and Wage Order 14-2001;

26 10. An award providing for payment of costs of suit;

27 11. An award of attorneys' fees; and

28 12. Such other and further relief as this Court may deem proper and just.

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DATED: March 22, 2023

By:

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