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ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
10/6/2025 2:31 PM
By: Erin Josie , Deputy

Attorneys for Plaintiffs and the proposed class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA – NORTH COUNTY**

ROMULO AGUSTIN-CHAVEZ; NEFTALI
GUEVARA-CANO; AGUSTIN CHAVEZ
AKA VALERIA, as individuals, on behalf of
themselves and others similarly situated

PLAINTIFFS,

v.

WE LOVE BERRIES LLC; and DOES 1 thru
50, inclusive,

DEFENDANTS.

CASE NO. 25CV04759

[Case Assigned for All Purposes to Hon.
Patricia Kelly in Dept. SM1]

**[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 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 ROMULO AGUSTIN-CHAVEZ; NEFTALI GUEVARA-CANO; and
2 AGUSTIN CHAVEZ AKA VALERIA, (“Plaintiffs”) as individuals, on behalf of themselves, all
3 others similarly situated, and for ROMULO AGUSTIN-CHAVEZ **only**, on behalf of the people
4 of the State of California and as “aggrieved employees” under Labor Code Private Attorneys
5 General Act of 2004, § 2699, *et seq.* (hereafter “PAGA”), complains of Defendant WE LOVE
6 BERRIES LLC (“Defendant”) and each of them, as follows:

7 **I.**

8 **INTRODUCTION**

9 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
10 382, on behalf of Plaintiffs and a Proposed Class defined as:

11 All persons who are employed or have been employed as a non-
12 exempt employee by WE LOVE BERRIES LLC in the State of
13 California since four (4) years prior to the filing of this action to the
14 present. (“Proposed Class”)

15 2. Plaintiffs and the Proposed Class worked for Defendant in or near Santa Barbara
16 County, California as seasonal agricultural workers. Plaintiffs and the Proposed Class worked in
17 the cultivation and harvesting of strawberries, and doing other agricultural work on land owned,
18 leased, managed, and/or operated, harvested, or otherwise made productive by Defendant.
19 Plaintiffs and the Proposed Class were paid on an hourly basis and also earned a piece rate for
20 work picking crops.

21 3. From at least four (4) years prior to the filing of this action continuing to the
22 present, Defendant has had a consistent policy of failing to pay wages and/or overtime to all
23 Proposed Class Members at the appropriate rate. Plaintiffs and the Proposed Class were not
24 properly compensated for all hours worked because Defendant failed to pay Plaintiffs and the
25 Proposed Class for each and every hour worked. Plaintiffs and the Proposed Class were required
26 to routinely work “off the clock” and performed compensable activities before, during, and after
27 each working shift for which no pay was provided.

28 a. Plaintiffs and the Proposed Class are required to report to work prior to their
scheduled shift and perform work but are routinely told by Defendant to wait

1 before Plaintiffs and the Proposed Class can begin their scheduled shifts.
2 Plaintiffs and the Proposed Class are required to arrive to the ranch at least ten
3 minutes up to an hour early. Plaintiffs and the Proposed Class members were
4 told to start the harvest before the official clock-in time, but were not paid for
5 this time worked. In addition, Plaintiffs and the Proposed Class are required to
6 walk ten (10) to thirty (30) minutes every day from their cars to the field and
7 spend time prepping materials and boxes for the day of work, all of which is
8 performed while “off the clock” and no pay is provided. This required “off the
9 clock” pre-shift work is performed daily and Plaintiffs and the Proposed Class
10 are not compensated for this wait time or worked performed. During winter,
11 Plaintiffs and the Proposed Class are required to wait between ten (10) to
12 fifteen (15) minutes at least three times during the season before they begin
13 their scheduled shifts. This required waiting time is not compensated by
14 Defendant. These activities and time are compensable, but Defendant fails to
15 pay Plaintiffs and the Proposed Class for this time worked.

16 b. In the middle of shifts, Defendant required Plaintiffs and the Proposed Class
17 to travel between fields once Plaintiffs and the Proposed Class are done
18 picking at one field. Plaintiffs and the Proposed Class are required to use their
19 own vehicles(s) to travel between fields per shift, at least once per season. The
20 time spent by Plaintiffs and the Proposed Class to travel between fields took
21 about ten (10) minutes. Plaintiffs and the Proposed Class are not compensated
22 for this travel time, nor are Plaintiffs and the Proposed Class reimbursed for
23 their use of their personal vehicle to perform required work.

24 c. With regard to post-shift work, at the end of each working shift, Plaintiffs and
25 the Proposed Class are instructed by the foreman to continue working to finish
26 their boxes and wait for the foreman to count the boxes manually before they
27 could be dismissed. Plaintiffs and the Proposed Class worked from
28 approximately ten (10) minutes to thirty (30) minutes frequently after the end

1 of their shift in order to finish their boxes and wait for the foreman to count
2 the boxes. Additionally, after the foreman announces the end of the shift, the
3 employees are required to line up with their boxes to drop off at the truck.
4 Packing and lining up to drop off their boxes takes between five (5) to twenty
5 (20) minutes every day. This time spent finishing their boxes, lining up with
6 their boxes, and returning them to the truck was performed after being
7 “clocked out” and as such, Plaintiffs and the Proposed Class are not
8 compensated for this time even though this time is compensable.

- 9 d. Additionally, Defendant has had a consistent policy of failing to pay wages
10 and/or overtime to Plaintiffs and the Proposed Class at the appropriate rate of
11 pay. Plaintiffs and the Proposed Class were not properly compensated for all
12 hours worked over eight (8) hours in one day or forty (40) hours in one week.
13 Plaintiffs and the Proposed Class were not properly compensated for overtime
14 worked because Defendant failed to pay Plaintiffs and the Proposed Class for
15 all hours worked over 8 hours per day or 40 hours per week. Defendant failed
16 to pay travel time, include work performed off-the-clock, and failed to
17 compensate Plaintiffs and the Proposed Class for all hours worked.

18 4. For at least four (4) years prior to the filing of this action and continuing to the
19 present, Defendant has had a consistent policy of failing to inform Proposed Class members of
20 their right to take rest periods by way of a lawful policy and of failing to provide Proposed Class
21 members within the State of California, including Plaintiffs, compliant rest periods. Defendant
22 has had a consistent policy of failing to provide all required rest periods of at least ten (10)
23 minutes per four (4) hours worked or major fraction thereof. Additionally, Defendant failed to
24 pay such employees one (1) hour of pay at the employee’s regular rate of compensation for each
25 workday that a compliant rest period was not provided, as required by California state wage and
26 hour laws. Defendant has had a consistent policy of failing to pay rest period premiums in
27 violation of Labor Code § 226.7.
28

1 5. For at least four (4) years prior to the filing of this action and continuing to the
2 present, Defendant has failed to reimburse Plaintiffs and the Proposed Class for their tools and
3 mileage necessary to perform their job duties. The work performed by Plaintiffs and the
4 Proposed Class necessitated the use of special tools. The work performed by Plaintiffs and the
5 Proposed Class necessitated the use of tools such as, but not limited to, harvest carts, tires for the
6 harvest cart, specialized knives, gloves, and boots, and various other tools. Defendant fails to
7 reimburse Plaintiffs and the Proposed Class for the costs associated with purchasing and using
8 these tools. Defendant also required Plaintiffs and the Proposed Class to travel between fields to
9 perform work tasks. Because Defendant did not provide buses or other transportation to workers
10 so that they could travel from field to field in the middle of their shifts, Plaintiffs and the
11 Proposed Class used their own vehicles and gas to travel from field to field. Defendant did not
12 reimburse Plaintiffs and the Proposed Class for their vehicle use for travel between Defendant's
13 job sites during the course of a work shift, in violation of California law.

14 6. For at least one (1) year prior to the filing of this action continuing to the present,
15 Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order 14-
16 2001 and Labor Code § 226(a) by failing issue accurate itemized wage statements reporting all
17 applicable hourly rates in effect during the pay period, and the corresponding number of hours
18 worked at each hourly rate by the employee and failing to include the required information on the
19 itemized wage statements.

20 7. For at least three (3) years prior to the filing of this action continuing to the present,
21 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiffs and
22 the Proposed Class.

23 8. Plaintiffs, on behalf of themselves and all Proposed Class Members brings this
24 action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1199, and 2802; Wage
25 Order 14-2001; and California Code of Regulations, Title 8, Section 11140, seeking unpaid
26 wages/overtime, rest period penalties, unreimbursed expenses, accurate itemized wage statements,
27 other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

28 9. Plaintiffs, on behalf of themselves and all Proposed Class Members, pursuant to

1 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
2 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

3 10. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
4 and Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to
5 PAGA, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim
6 pursuant to PAGA. Plaintiff ROMULO AGUSTIN-CHAVEZ, on behalf of himself and all
7 aggrieved employees presently or formerly employed by Defendant during the liability period as
8 defined in his PAGA notice letter (*see* Exhibit “1”), brings this representative action pursuant to
9 Labor Code § 2699, *et seq.* seeking penalties for Defendant’s violations of Labor Code §§ 201,
10 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199, and 2802.

11 II.

12 JURISDICTION AND VENUE

13 11. This Court has subject matter jurisdiction over all causes of action asserted herein
14 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
15 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
16 of interest, exceeds \$35,000, and because each cause of action asserted arises under the laws of the
17 State of California or is subject to adjudication in the courts of the State of California.

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

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

26 14. This case should be classified as complex according to Rule 3.400 of the California
27 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
28 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive

1 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
2 require substantial post judgment judicial supervision.

3 15. Plaintiffs file this amended complaint adding a claim for penalties pursuant to
4 Labor Code § 2699, *et seq.* as a matter of right, pursuant to Labor Code § 2699.3(a)(2)(C)] on
5 behalf of ROMULO AGUSTIN-CHAVEZ only.

6 **III.**

7 **PARTIES**

8 **A. PLAINTIFFS**

9 16. Plaintiffs ROMULO AGUSTIN-CHAVEZ; NEFTALI GUEVARA-CANO; and
10 AGUSTIN CHAVEZ AKA VALERIA are residents of California.

11 17. Plaintiffs and all Proposed Class Members, were regularly required to:

- 12 a. Work without being paid for all hours at the appropriate overtime rate;
- 13 b. Work without being paid for all hours worked;
- 14 c. Work without being provided compliant rest periods;
- 15 d. Work without being reimbursed for necessary tools and equipment and
16 using personal vehicles for work related purposes;
- 17 e. Work without Defendant providing accurate itemized wage statements;

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

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

22 20. Plaintiff ROMULO AGUSTIN-CHAVEZ and all aggrieved employees as defined
23 in his notice letter to the LWDA are “aggrieved employees” within the meaning of Labor Code §
24 2699, *et seq.* (*see* Labor Code §2699(c).)

25 **B. DEFENDANTS**

26 21. Defendant WE LOVE BERRIES LLC is believed to be a California corporation
27 operating within the State of California. Defendant’s corporate address is believed to be PO Box
28 789, Guadalupe, CA 93434. Upon information and belief, Defendant employed Plaintiffs and

1 similarly situated persons as hourly employees within California. Defendant has done and does
2 business throughout the State of California.

3 22. The true names and capacities, whether individual, corporate, associate, or
4 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
5 Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
6 § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants
7 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
8 to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
9 capacities of the Defendants designated hereinafter as DOES when such identities become known.

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

15 24. Furthermore, Defendants acted in all respects as the employers or joint employers
16 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
17 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
18 engaged, thereby creating a common law employment relationship, with the Proposed Class.
19 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

20 **IV.**

21 **FACTUAL BACKGROUND**

22 25. Plaintiffs and the Proposed Class are, and at all times pertinent hereto, have been
23 classified as non-exempt employees by Defendant. Plaintiffs and the Proposed Class were paid
24 on an hourly basis and also earned a piece rate for work picking crops.

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

28 27. On a regular and consistent basis, Defendant has had a consistent policy of failing

1 to pay wages and/or overtime to Plaintiffs and all Proposed Class Members at the appropriate rate
2 as follows:

3 28. Plaintiffs and the Proposed Class were not properly compensated for all hours
4 worked because Defendant failed to pay Plaintiffs and the Proposed Class for each and every
5 hour worked. Plaintiffs and the Proposed Class were required to routinely work “off the clock”
6 and performed compensable activities before, during, and after each working shift for which no
7 pay was provided.

8 a. Plaintiffs and the Proposed Class are required to report to work prior to their
9 scheduled shift and perform work but are routinely told by Defendant to wait
10 before Plaintiffs and the Proposed Class can begin their scheduled shifts.

11 Plaintiffs and the Proposed Class are required to arrive to the ranch at least ten
12 minutes up to an hour early. Plaintiffs and the Proposed Class members were
13 told to start the harvest before the official clock-in time, but were not paid for
14 this time worked. In addition, Plaintiffs and the Proposed Class are required to
15 walk ten (10) to thirty (30) minutes every day from their cars to the field and
16 spend time prepping materials and boxes for the day of work, all of which is
17 performed while “off the clock” and no pay is provided. This required “off the
18 clock” pre-shift work is performed daily and Plaintiffs and the Proposed Class
19 are not compensated for this wait time or worked performed. During winter,
20 Plaintiffs and the Proposed Class are required to wait between ten (10) to
21 fifteen (15) minutes at least three times during the season before they begin
22 their scheduled shifts. This required waiting time is not compensated by
23 Defendant.

24 b. In the middle of shifts, Defendant required Plaintiffs and the Proposed Class
25 to travel between fields once Plaintiffs and the Proposed Class are done
26 picking at one field. Plaintiffs and the Proposed Class are required to use their
27 own vehicles(s) to travel between fields per shift, at least once per season. The
28 time spent by Plaintiffs and the Proposed Class to travel between fields took

1 about ten (10) minutes. Plaintiffs and the Proposed Class are not compensated
2 for this travel time, nor are Plaintiffs and the Proposed Class reimbursed for
3 their use of their personal vehicle to perform required work.

- 4 c. With regard to post-shift work, at the end of each working shift, Plaintiffs and
5 the Proposed Class are instructed by the foreman to continue working to finish
6 their boxes and wait for the foreman to count the boxes manually before they
7 could be dismissed. Plaintiffs and the Proposed Class worked from
8 approximately ten (10) minutes to thirty (30) minutes frequently after the end
9 of their shift in order to finish their boxes and wait for the foreman to count
10 the boxes. Additionally, after the foreman announces the end of the shift, the
11 employees are required to line up with their boxes to drop off at the truck.
12 Packing and lining up to drop off their boxes takes between five (5) to twenty
13 (20) minutes every day. This time spent finishing their boxes, lining up with
14 their boxes, and returning them to the truck was performed after being
15 “clocked out” and as such, Plaintiffs and the Proposed Class are not
16 compensated for this time even though this time is compensable.
- 17 d. Additionally, Defendant has had a consistent policy of failing to pay wages
18 and/or overtime to Plaintiffs and the Proposed Class at the appropriate rate of
19 pay. Plaintiffs and the Proposed Class were not properly compensated for all
20 hours worked over eight (8) hours in one day or forty (40) hours in one week.
21 Plaintiffs and the Proposed Class were not properly compensated for overtime
22 worked because Defendant failed to pay Plaintiffs and the Proposed Class for
23 all hours worked over 8 hours per day or 40 hours per week. Defendant failed
24 to pay travel time, include work performed off-the-clock, and failed to
25 compensate Plaintiffs and the Proposed Class for all hours worked.

26 29. On a regular and consistent basis, Defendant has had a consistent policy of failing
27 to inform Proposed Class members of their right to take rest periods by way of a lawful policy and
28 of failing to provide Proposed Class members within the State of California, including Plaintiffs,

1 compliant rest periods. Defendant has had a consistent policy of failing to provide all required rest
2 periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof.
3 Additionally, Defendant failed to pay such employees one (1) hour of pay at the employee's regular
4 rate of compensation for each workday that a compliant rest period was not provided, as required
5 by California state wage and hour laws. Defendant has had a consistent policy of failing to pay
6 rest period premiums in violation of Labor Code §§ 226.7 and 512.

7 30. For at least four (4) years prior to the filing of this action and continuing to the
8 present, Defendant has failed to reimburse Plaintiffs and the Proposed Class for their tools and
9 mileage necessary to perform their job duties. The work performed by Plaintiffs and the
10 Proposed Class necessitated the use of special tools. Defendant fails to reimburse Plaintiffs and
11 the Proposed Class for the costs associated with purchasing and using these tools. Defendant also
12 required Plaintiffs and the Proposed Class to travel between fields to perform work tasks.
13 Because Defendant did not provide buses or other transportation to workers so that they could
14 travel from field to field in the middle of their shifts, Plaintiffs and the Proposed Class used their
15 own vehicles to travel from field to field. Defendant did not reimburse Plaintiffs and the
16 Proposed Class for their vehicle use or gas for travel between Defendant's job sites during the
17 course of a work shift, in violation of California law.

18 31. For at least one (1) year prior to the filing of this action continuing to the present,
19 Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order 14-
20 2001 and Labor Code § 226(a) by failing to issue accurate itemized wage statements reporting all
21 applicable hourly rates in effect during the pay period, and the corresponding number of hours
22 worked at each hourly rate by the employee and failing to include the required information on
23 the itemized wage statements.

24 32. Defendant willfully failed to pay wages and compensation, when Plaintiffs and all
25 Proposed Class Members quit or were discharged. This failure was willful, without legal
26 justification, and interfered with Plaintiffs' and Class Members' rights.

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

28 **V.**

1 **CLASS ACTION ALLEGATIONS**

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

5 All persons who are employed or have been employed as a non-
6 exempt employee by WE LOVE BERRIES LLC in the State of
7 California since four (4) years prior to the filing of this action to the
8 present. ("Proposed Class")

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

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

15 **A. NUMEROSITY**

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

21 38. Plaintiffs allege that Defendant's employment records would provide information
22 as to the number and location of all Proposed Class Members. Joinder of all members of the
23 Proposed Class is not practicable.

24 **B. COMMONALITY**

25 39. There are questions of law and fact common to the Proposed Class that predominate
26 over any questions affecting only individual Proposed Class Members. These common questions
27 of law and fact include, without limitation:

28 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, and 1199;

1 b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 14
2 -2001 or other applicable IWC Wage Orders, by failing to inform Plaintiffs and the Proposed Class
3 of their right to take rest periods and failing to provide required rest periods throughout the term
4 of employment and failing to compensate said employees one (1) hours wages in lieu of rest
5 periods;

6 c. Whether Defendants violated Labor Code § 2802 and/or Wage Order 14-
7 2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the
8 cost of tools and using their own vehicles to perform required work;

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

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

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

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

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

23 **C. TYPICALITY**

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

28 ///

1 **D. ADEQUACY OF REPRESENTATION**

2 41. Plaintiffs will fairly and adequately represent and protect the interests of the
3 members of the proposed Class.

4 42. Counsel who represent Plaintiffs and the Proposed Class are competent and
5 experienced in litigating large employment class actions.

6 **E. SUPERIORITY OF CLASS ACTION**

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

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

19 **VI.**

20 **FIRST CAUSE OF ACTION**

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

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

23 **LABOR CODE §§ 510, 1194, AND 1199**

24 45. Plaintiffs, on behalf of themselves and the Proposed Class, reallege and incorporate
25 by reference all previous paragraphs.

26 46. Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes
27 require an employer to compensate its employees at the minimum wage rate for all hours worked
28 and at a rate of no less than one and one-half times the regular rate of pay for any work in excess

1 of eight hours in one workday and any work in excess of 40 hours in any one workweek. Any work
2 in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular
3 rate of pay. California law also requires that any compensation must be included in the regular rate
4 of pay for the purposes of determining correct overtime rates.

5 47. Here, Defendant has had a consistent policy of failing to pay wages and/or
6 overtime to all Proposed Class Members at the appropriate rate. Plaintiffs and the Proposed
7 Class were not properly compensated for all hours worked because Defendant failed to pay
8 Plaintiffs and the Proposed Class for each and every hour worked. Plaintiffs and the Proposed
9 Class were required to routinely work “off the clock” and performed compensable activities
10 before, during, and after each working shift for which no pay was provided.

- 11 a. Plaintiffs and the Proposed Class are required to report to work prior to their
12 scheduled shift and perform work but are routinely told by Defendant to wait
13 before Plaintiffs and the Proposed Class can begin their scheduled shifts.
14 Plaintiffs and the Proposed Class are required to arrive to the ranch at least ten
15 minutes up to an hour early. Plaintiffs and the Proposed Class members were
16 told to start the harvest before the official clock-in time, but were not paid for
17 this time worked. In addition, Plaintiffs and the Proposed Class are required to
18 walk ten (10) to thirty (30) minutes every day from their cars to the field and
19 spend time prepping materials and boxes for the day of work, all of which is
20 performed while “off the clock” and no pay is provided. This required “off the
21 clock” pre-shift work is performed daily and Plaintiffs and the Proposed Class
22 are not compensated for this wait time or worked performed. During winter,
23 Plaintiffs and the Proposed Class are required to wait between ten (10) to
24 fifteen (15) minutes at least three times during the season before they begin
25 their scheduled shifts. This required waiting time is not compensated by
26 Defendant. These activities and time are compensable, but Defendant fails to
27 pay Plaintiffs and the Proposed Class for this time worked.
28

- 1 b. In the middle of shifts, Defendant required Plaintiffs and the Proposed Class
2 to travel between fields once Plaintiffs and the Proposed Class are done
3 picking at one field. Plaintiffs and the Proposed Class are required to use their
4 own vehicles(s) to travel between fields per shift, at least once per season. The
5 time spent by Plaintiffs and the Proposed Class to travel between fields took
6 about ten (10) minutes. Plaintiffs and the Proposed Class are not compensated
7 for this travel time, nor are Plaintiffs and the Proposed Class reimbursed for
8 their use of their personal vehicle to perform required work.
- 9 c. With regard to post-shift work, at the end of each working shift, Plaintiffs and
10 the Proposed Class are instructed by the foreman to continue working to finish
11 their boxes and wait for the foreman to count the boxes manually before they
12 could be dismissed. Plaintiffs and the Proposed Class worked from
13 approximately ten (10) minutes to thirty (30) minutes frequently after the end
14 of their shift in order to finish their boxes and wait for the foreman to count
15 the boxes. Additionally, after the foreman announces the end of the shift, the
16 employees are required to line up with their boxes to drop off at the truck.
17 Packing and lining up to drop off their boxes takes between five (5) to twenty
18 (20) minutes every day. This time spent finishing their boxes, lining up with
19 their boxes, and returning them to the truck was performed after being
20 “clocked out” and as such, Plaintiffs and the Proposed Class are not
21 compensated for this time even though this time is compensable.
- 22 d. Additionally, Defendant has had a consistent policy of failing to pay wages
23 and/or overtime to Plaintiffs and the Proposed Class at the appropriate rate of
24 pay. Plaintiffs and the Proposed Class were not properly compensated for all
25 hours worked over eight (8) hours in one day or forty (40) hours in one week.
26 Plaintiffs and the Proposed Class were not properly compensated for overtime
27 worked because Defendant failed to pay Plaintiffs and the Proposed Class for
28 all hours worked over 8 hours per day or 40 hours per week. Defendant failed

1 to pay travel time, include work performed off-the-clock, and failed to
2 compensate Plaintiffs and the Proposed Class for all hours worked.

3 48. Defendant failed to pay travel time, include work performed off-the-clock, and
4 failed to compensate Plaintiffs and the Proposed Class for all hours worked

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

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

13 **VII.**

14 **SECOND CAUSE OF ACTION**

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

16 **FAILURE TO ALLOW REST PERIODS PURSUANT TO**

17 **LABOR CODE § 226.7**

18 51. Plaintiffs, on behalf of themselves and the Proposed Class, reallege and incorporate
19 by reference all previous paragraphs.

20 52. Labor Code § 226.7 requires an employer to pay an additional hour (1) of
21 compensation for each rest period the employer fails to provide. Employees are entitled to a paid
22 ten (10) minute rest break for every four (4) hours worked (or major fraction thereof). Defendant
23 failed to maintain a policy informing Plaintiffs and the Proposed Class of this right.

24 53. Defendant failed to appraise Plaintiffs and the Proposed Class of their rights
25 associated with rest periods and failed to provide all required ten (10) minute rest periods. Plaintiffs
26 and the Proposed Class did not receive a second rest period despite Defendant regularly requiring
27 Plaintiffs and the Proposed Class to work over six (6) hours. Defendant failed to provide Plaintiffs
28 and the Proposed Class with second rest periods during the 2022-2023 seasons.

54. In addition, Plaintiffs and the Proposed Class were not compensated with one (1) hour of wages for each compliant rest period not provided as required by Labor Code § 226.7.

55. In *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an Employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Defendant has had a consistent policy of failing to pay rest premiums in violation of Labor Code § 226.7.

56. Pursuant to Labor Code § 226.7, Plaintiffs and the Proposed Class are entitled to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven at trial.

VIII.

THIRD CAUSE OF ACTION

PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS

FAILURE TO REIMBURSE EXPENSES PURSUANT TO

LABOR CODE § 2802

57. Plaintiffs on behalf of themselves and the Proposed Class, reallege and incorporate by reference all previous paragraphs.

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

59. Defendant has failed to reimburse Plaintiffs and the Proposed Class the cost of using their personal tools for business related purposes.

60. Defendant requires Plaintiffs and the Proposed Class to purchase a variety of tools in order to perform their work adequately. These tools/equipment include (1) harvest cart - \$60.00 per season; (2) tires for harvest cart - \$25.00, four times per season; (3) specialized knife - \$12.00,

1 twice per season; (4) gloves - \$28.00, up to fifteen times per season; (5) boots - \$45.00, twice per
2 season. None of these tools are provided by Defendant. Defendant did provide Plaintiffs and the
3 Proposed Class with scissors, but they were in poor condition, so most employees had to purchase
4 their own.

5 61. Defendant also required Plaintiffs and the Proposed Class to travel between fields
6 to perform work tasks. Because Defendant did not provide buses or other transportation to workers
7 so that they could travel from field to field in the middle of their shifts, Plaintiffs and the Proposed
8 Class used their own vehicles to travel from field to field. Defendant did not reimburse Plaintiffs
9 and the Proposed Class for their vehicle use or gas for travel between Defendant's job sites during
10 the course of a work shift, in violation of California law.

11 62. As a result of the unlawful acts of Defendants, Plaintiffs and the Proposed Class
12 have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
13 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

14 **IX.**

15 **FOURTH CAUSE OF ACTION**

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

17 **VIOLATION OF LABOR CODE § 226(A)**

18 63. Plaintiffs, on behalf of themselves and the Proposed Class, reallege and incorporate
19 by reference all previous paragraphs.

20 64. Labor Code § 226(a) requires that every employer shall, semimonthly or at the time
21 of each payment of wages, furnish each of his or her employees, an accurate itemized statement in
22 writing showing all applicable hourly rates in effect during the pay period, the corresponding
23 number of hours worked at each hourly rate by the employee. (Labor Code §§ 226(a)(2), and (9).)

24 65. As a result of Defendant's failure to pay wages as described above, Defendant has
25 failed to include the appropriate rates of pay and the accurate hours worked on itemized wage
26 statements for Plaintiffs and the Proposed Class.

27 66. Labor Code § 226(a)(2) requires that every employer shall semimonthly or at the
28 time of each payment of wages, furnish each of his or her employees, an accurate itemized

1 statement in writing showing the total hours worked by the employee. Plaintiffs and the Proposed
2 Class are issued wage statements that do not include the total hours worked by the employee.

3 67. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the
4 time of each payment of wages, furnish each of his or her employees, an accurate itemized
5 statement in writing showing all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee. Plaintiffs and the
7 Proposed Class are issued wage statements that do not include all applicable hourly rates in effect
8 during the pay period and the corresponding number of hours worked at each hourly rate by the
9 employee.

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

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

18 **X.**

19 **FIFTH CAUSE OF ACTION**

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

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

22 70. Plaintiffs, on behalf of themselves and the Proposed Class, reallege and incorporate
23 by reference all previous paragraphs.

24 71. Numerous members of the Proposed Class including the Plaintiffs are no longer
25 employed by Defendant. They were either fired, quit Defendant's employ, or were seasonally laid
26 off.

27 72. Defendant's failure to pay wages, as alleged above was willful in that Defendant
28 knew wages to be due but failed to pay them, thus entitling Plaintiffs and the Proposed Class to

1 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
2 penalty until paid for a period of up to thirty (30) days from the time they were due. Such waiting
3 time penalties apply and accrue even where employees are seasonal laid off, but subsequently
4 recalled, with each seasonal lay off requiring full payment of wages due.

5 73. Defendant has failed to pay Plaintiffs and others a sum certain at the time of
6 termination, seasonal lay off, or within seventy-two (72) hours of their resignation, and have failed
7 to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203,
8 Plaintiffs and the Proposed Class are entitled to a penalty in the amount of Plaintiffs' and the
9 Proposed Class Members' daily wage multiplied by thirty (30) days.

10 **XI.**

11 **SIXTH CAUSE OF ACTION**

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

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

14 74. Plaintiffs, on behalf of themselves and the Proposed Class, reallege and incorporate
15 by reference all previous paragraphs.

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

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

25 77. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
26 practices.

27 78. California's wage and hour laws express fundamental public policies. Providing
28 employees with proper wages and compensation are fundamental public policies of this State and

1 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
2 vigorously minimum labor standards, to ensure that employees are not required or permitted to
3 work under substandard and unlawful conditions, and to protect law-abiding employers and their
4 employees from competitors who lower their costs by failing to comply with minimum labor
5 standards.

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

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

14 81. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
15 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
16 § 17200, *et seq.* of the Business & Professions Code.

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

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

26 ///

1 **XII.**

2 **SEVENTH CAUSE OF ACTION**

3 **PLAINTIFF ROMULO AGUSTIN-CHAVEZ ON BEHALF OF HIMSELF AND THE**

4 **AGGRIEVED EMPLOYEES**

5 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

6 84. Plaintiff ROMULO AGUSTIN-CHAVEZ only, on behalf of himself and the
7 aggrieved employees, reallege and incorporate by reference all previous paragraphs.

8 85. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
9 ROMULO AGUSTIN-CHAVEZ seeks penalties under Labor Code § 2699, *et seq.* use of
10 Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199,
11 and 2802; IWC Wage Order 14-2001; and California Code of Regulations, Title 8, Section 11140,
12 which call for civil penalties.

13 86. Plaintiff ROMULO AGUSTIN-CHAVEZ brings this representative action on
14 behalf of themselves and the State of California as well as a group of aggrieved employees defined
15 as: "All persons who are employed or have been employed as a non-exempt employee by WE
16 LOVE BERRIES LLC, in the State of California since one (1) year prior to the date of Plaintiff's
17 PAGA Notice Letter to the LWDA and Defendant and continuing to the present". ("aggrieved
18 employees").

19 87. As a result of the acts alleged above, Plaintiff ROMULO AGUSTIN-CHAVEZ
20 seeks penalties under Labor Code § 2699, *et seq.* because of Defendant's violation of Labor Code
21 §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199, and 2802, which call for civil penalties.

22 88. For each such penalty, Plaintiff ROMULO AGUSTIN-CHAVEZ and the aggrieved
23 employees are entitled to penalties in an amount to be shown at trial, subject to the following
24 formula:

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

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

27 89. These penalties shall be allocated sixty-five percent (65%) to the LWDA and thirty-
28 five percent (35%) to the affected employees.

90. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff ROMULO AGUSTIN-CHAVEZ uploaded a notice letter to the LWDA¹ and mailed a letter by certified mail to Defendant's entity addresses and agent addresses, which are PO Box 789, Guadalupe, CA 93434; and 1240 Professional Pkwy B, Nipomo, CA 93444, as proscribed by the Code on July 31, 2025, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199, and 2802, (*see* Exhibit "1"). Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (*see* Exhibit "2"). Additionally, Plaintiff received a signed green return receipt from Defendant, indicating that it received Plaintiff's letter. (*see* Exhibit "3").

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

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

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

2. For compensatory damages in the amount of Plaintiffs' and each Proposed Class Members' unreimbursed out of pocket expenses as a requirement of employment;

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

¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency / Department of Industrial Relations website (<https://dir.tfaforms.net/308>).

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

3 5. An award of prejudgment and post judgment interest;

4 6. An order enjoining Defendant and its agents, servants, and employees, and all
5 persons acting under, in concert with, or for it from providing Plaintiffs with proper wages and/or
6 overtime, rest periods, accurate itemized wage statements, and wages upon termination/resignation
7 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1199, 2802, and IWC 14-
8 2001;

9 7. For restitution for unfair competition pursuant to Business & Professions Code
10 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

11 8. For injunctive relief pursuant to Labor Code §226(a) requiring Defendant to remedy
12 the inaccurate itemized wage statements issued to Plaintiffs and the Class.

13 9. For injunctive relief pursuant to Business & Professions Code §17200, *et seq.* to
14 remedy the unfair, unlawful and fraudulent activity alleged above.

15 10. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
16 Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199, and 2802, for ROMULO
17 AGUSTIN-CHAVEZ and the aggrieved employees only;

18 11. An award providing for payment of costs of suit;

19 12. An award of attorneys' fees; and

20 13. Such other and further relief as this Court may deem proper and just.

21 **DEMAND FOR JURY TRIAL**

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

23
24 DATED: October 6, 2025

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

25
26
27 By: _____

Kelsey M. Szamet

Attorneys for Plaintiffs and the Proposed Class

EXHIBIT "1"



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(818) 990-8300 

July 31, 2025

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

We Love Berries LLC
PO Box 789
Guadalupe, CA 93434
Via Certified Mailing # 9589 0710 5270 1148 9687 30

We Love Berries LLC
C/O Lucio Vargas
1240 Professional Pkwy B
Nipomo, CA 93444
Via Certified Mailing # 9589 0710 5270 1148 9687 47

Re: Romulo Agustin-Chavez v. We Love Berries LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Romulo Agustin-Chavez (“Plaintiff”) and a proposed group of current and former employees working for We Love Berries LLC (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as a non-exempt employee by We Love Berries LLC, in the State of California since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Plaintiff and the aggrieved employees worked for Defendant in or near Santa Barbara County, California as seasonal agricultural workers. Plaintiff and the aggrieved employees worked in the

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cultivation and harvesting of strawberries, and doing other agricultural work on land owned, leased, managed, and/or operated, harvested, or otherwise made productive by Defendant. Plaintiff and the aggrieved employees were paid on an hourly basis and also earned a piece rate for work picking crops.

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the *regular rate of pay* for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation must be included in the regular rate of pay for the purposes of determining correct overtime rates.

Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and other aggrieved employees were not properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week. Plaintiff and the aggrieved employees were not properly compensated for all hours worked, because Defendant failed to pay Plaintiff and the aggrieved employees for each and every hour worked. Plaintiff and the aggrieved employees routinely worked “off the clock” and performed compensable activities before, during, and after each working shift for which no pay was provided as detailed below.

With regard to pre-shift work, Plaintiff and the aggrieved employees are required to report to work prior to their scheduled shift and perform work but are routinely told by Defendant to wait before Plaintiff and the aggrieved employees can begin their scheduled shifts. Plaintiff and the aggrieved employees are required to arrive to the ranch at least ten minutes up to an hour early. Plaintiff and the aggrieved employees were told to start the harvest before the official clock-in time but were not paid for this time worked. In addition, Plaintiff and the aggrieved employees are required to walk ten (10) to thirty (30) minutes every day from their cars to the field and spend time prepping materials and boxes for the day of work, all of which is performed while “off the clock” and no pay is provided. This required “off the clock” pre-shift work is performed daily and Plaintiff and the aggrieved employees are not compensated for this wait time or worked performed. During winter, Plaintiff and the aggrieved employees are required to wait between ten (10) to fifteen (15) minutes at least three times during the season before they begin their scheduled shifts. This required waiting time is not compensated by Defendant. These activities and time are compensable, but Defendant fails to pay Plaintiff and the aggrieved employees for this time worked.

In the middle of shifts, Defendant required Plaintiff and the aggrieved employees to travel between fields once Plaintiff and the aggrieved employees are done picking at one field. Plaintiff and the aggrieved employees are required to use their own vehicles(s) to travel between fields per shift, at

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least once per season. The time spent by Plaintiff and the aggrieved employees to travel between fields took about ten (10) minutes. Plaintiff and the aggrieved employees are not compensated for this travel time, nor are Plaintiff and the aggrieved employees reimbursed for their use of their personal vehicle to perform required work.

With regard to post-shift work, at the end of each working shift, Plaintiff and the aggrieved employees are instructed by the foreman to continue working to finish their boxes and wait for the foreman to count the boxes manually before they could be dismissed. Plaintiff and the aggrieved employees worked from approximately ten (10) minutes to thirty (30) minutes frequently after the end of their shift in order to finish their boxes and wait for the foreman to count the boxes. Additionally, after the foreman announces the end of the shift, the employees are required to line up with their boxes to drop off at the truck. Packing and lining up to drop off their boxes takes between five (5) to twenty (20) minutes every day. This time spent finishing their boxes, lining up with their boxes, and returning them to the truck was performed after being “clocked out” and as such, Plaintiffs and the aggrieved employees are not compensated for this time even though this time is compensable.

Additionally, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and the aggrieved employees at the appropriate rate of pay. Plaintiff and other aggrieved employees were not properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week because Defendant failed to pay travel time and include work performed off-the-clock. Therefore, failed to compensate Plaintiff and the aggrieved employees for all hours worked.

Pursuant to Labor Code § 226.7 and Wage Order 14-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to appraise Plaintiff and the aggrieved employees of their rights associated with rest periods and failed to provide all required ten (10) minute rest periods. Plaintiff and the aggrieved employees did not receive a second rest period despite Defendant regularly requiring Plaintiff and the aggrieved employees to work over six (6) hours. Defendant failed to provide Plaintiff and the aggrieved employees with second rest periods during the 2022-2023 seasons.

In addition, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each compliant rest period not provided as required by Labor Code § 226.7. In *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an Employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. Here, Defendant has had a consistent policy of failing to pay rest period premiums in compliance with

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California law. Defendant has had a consistent policy of failing to pay rest premiums in violation of Labor Code § 226.7.

In addition, Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal tools for business related purposes. Defendant requires Plaintiff and the aggrieved employees to purchase a variety of tools in order to perform their work adequately. These tools/equipment include (1) harvest cart - \$60.00 per season; (2) tires for harvest cart - \$25.00, four times per season; (3) specialized knife - \$12.00, twice per season; (4) gloves - \$28.00, up to fifteen times per season; (5) boots - \$45.00, twice per season. None of these tools are provided by Defendant. Defendant did provide Plaintiff and the aggrieved employees with scissors, but they were in poor condition, so most employees had to purchase their own. Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with purchasing and using these tools/equipment.

Defendant also required Plaintiff and all aggrieved employees to travel between fields to perform work tasks. Because Defendant did not provide buses or other transportation to workers so that they could travel from field to field in the middle of their shifts, Plaintiff and the aggrieved employees used their own vehicles to travel from field to field. Defendant did not reimburse Plaintiff and the aggrieved employees for their vehicle use or gas for travel between Defendant's job sites during the course of a work shift, in violation of California law.

As a result of the claims alleged above, Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the total hours worked by the employee. As such, Plaintiff is an aggrieved employee within the meaning PAGA and Defendants has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Also, Defendant issued to Plaintiff and the aggrieved employees itemized wage statements that

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did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9). The itemized wage statements provided to Plaintiff and the aggrieved employees did not include the hours worked at each hourly rate.

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ or upon each seasonal lay off. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination, seasonal lay off, or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203. As such, Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination, seasonal lay off, or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §§201, 202, and 203. (See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754, reh’g denied (June 13, 2018), review denied (Aug. 8, 2018), allowing named Plaintiffs to pursue PAGA penalties for violations not personally suffered.). In cases involving seasonal layoffs due to the end of harvest seasons, courts have routinely found employees discharged from seasonal agricultural work are entitled to waiting time penalties for each seasonal layoff. See *Doe v. D.M. Camp & Sons*, No. CIV-F051417AWISMS, 2009 WL 921442, at *12 (E.D. Cal. Mar. 31, 2009) (citing *Smith v. Sup. Ct.*, 39 Cal.4th 77, 86 (2006)); *Valenzuela v. Giumarra Vineyards Corp.*, 614 F. Supp. 2d 1089, 1103 (E.D. Cal. 2009). This comports with the public policy that favors the full and prompt payment of earned wages. See, e.g., *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika*, *supra*, 68 Cal.App.4th at 492.

Further, under Labor Code § 2699.3(c)(2)(A), Defendant may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199, and 2802, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

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LABOR & WORKFORCE DEVELOPMENT AGENCY

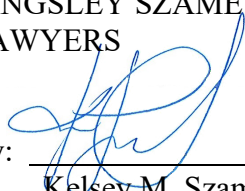
California Labor Code §2699 Penalties

July 31, 2025

Page 6 of 6

Very truly yours,

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

By: 

Kelsey M. Szamet

[KMS/tg]

Cc: 1. MARTINEZ AGUILASOCHO LAW, INC., P.O. Box 1998, , Bakersfield, CA93303

EXHIBIT "2"

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley Szamet Employment Lawyers

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 1200

Your Mobile Phone Number

818-990-8300

Your Work Phone Number

818-990-8300

Your City *

Encino

Your State *

California

**Your Zip/Postal Code ***

91436



Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Romulo Agustin-Chavez

Plaintiff/Aggrieved Employee Occupation *

Farmworker

[Add Additional Plaintiffs](#)**Employer Information****Employer Entity Type ***

Other/Don't Know

This field is required.**Employer Name ***

We Love Berries LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

PO Box 789

Employer City *

Guadalupe

Employer State *

California

Employer Zip/Postal Code *

93434

Employer Industry *

Agriculture

Add additional defendants☒ Add any entity other than an individual☐ Add an individual/sole proprietor employer**Additional Employer Information (Corporation/General Partnership)****Employer Entity Type**

Other/Don't Know

Employer Name *

We Love Berries LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

1240 Professional Pkwy B

Employer City *

Nipomo

Employer State *

California

Employer Zip/Postal Code *

93444

Employer Industry *

Agriculture

[Add Additional Employers](#)**Notice General Information****Estimated Number of Employees Impacted by Violations ***

50

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information**Billing First Name ***

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type ***Credit Card Number *****CVV Number *****Credit Card Expiration Month ***
mm**Credit Card Expiration Year ***
yyyy**Other PAGA Notices**

[Search for PAGA Case number](#)

- ☒ I have searched LWDA's database for other PAGA claims filed against the employer(s) named in my NEW PAGA Claim Notice.

- ☒ No, there are no other PAGA claims against the employer(s) named in my New PAGA Claim Notice.
- ☐ Yes, other PAGA claims are listed on the website, or I am aware of other PAGA claims against the employer(s) named in my New PAGA Claim Notice.

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

PAGA Letter –...ve Berries.pdf

Do not attach any documents to the Notice.

Other Attachment – (if any) (must be a .pdf)

No file chosen

[Add Another Attachment](#)

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ **I understand that, if I file, I must comply with the redaction rules consistent with this notice.**

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

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I'm not a robot

reCAPTCHA
[Privacy](#) - [Terms](#)

reCAPTCHA helps prevent automated form spam.

[Previous Page](#)

[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case



Thank you for submission of your PAGA Case.

From noreply@salesforce.com <noreply@salesforce.com>
on behalf of
LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Date Thu 7/31/2025 1:36 PM
To Service <service@kingsleylawyers.com>

External Email!

7/31/2025

LWDA Case No. LWDA-CM-1115637-25
Law Firm : Kingsley Szamet Employment Lawyers
Plaintiff Name : Romulo Agustin-Chavez
Employer: We Love Berries LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

Please note that a PAGA Notice is not a complaint within the meaning of Division 5 (Labor Code §§6300 et seq.). To file a complaint about workplace safety and health hazards with Cal/OSHA, please visit: <https://www.dir.ca.gov/dosh/complaint.htm>

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)



State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

From noreply@salesforce.com <noreply@salesforce.com>
on behalf of
LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Date Thu 7/31/2025 1:37 PM
To Service <service@kingsleylawyers.com>

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-1115637-25

Submission Type: PAGA Notice

Order Number: ORD-000333705

Total:\$75.00

Card Type: [REDACTED]

Date: 7/31/2025

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Suite 1200

Encino, California

91436

EXHIBIT "3"

USPS TRACKING#

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10



9590 9402 8465 3186 4068 85

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Kingsley S2amet
16133 Ventura Blvd, Suite 1200
Encino, CA 91436

We Love Benes LLC

PAID 1500 7.31.23

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

We Love Benies LLC
PO Box 789
Guadalupe, CA 93434



9590 9402 8465 3186 4068 85

2. Article Number (Transfer from service label)

9589 0710 5270 1148 9687 30

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Addressee ☐ Agent

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Mail Restricted Delivery

0

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

We Love Bernies LLC
c/o Lucio Vargas
1240 Professional Pkwy B
Nipomo, CA 93444



9590 9402 8465 3186 4068 78

2. Article Number (Transfer from service label)

9589 0710 5270 1148 9687 47

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent☐ Addressee

B. Received by (Printed Name)

Lucia Sanchez

C. Date of Delivery

8-4-25

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☒ No

3. Service Type

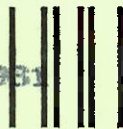
- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |

Mail

Mail Restricted Delivery

30)

USPS TRACKING#



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 8465 3186 4068 78

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Kingsley Szamet
16133 Ventura Blvd, Suite 1200
Encino, CA 91436

We Love Bernier LLC
PAGA Ltr. 7.31.25

