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8 JOSÉ DIAZ, and all others similarly situated
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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MONTEREY**
(UNLIMITED JURISDICTION)

12 JOSÉ DIAZ, on behalf of himself and all others
13 similarly situated, the general public, and as an
14 “aggrieved employee” on behalf of other
15 “aggrieved employees” and the State of
California under the Labor Code Private
Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18
19 SMITH PACKING, INC., a California
20 corporation; and DOES 1–50, inclusive,

21 *Defendant(s).*

Case No. 25CV003974

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 221, 226.2, 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code § 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
7. Civil Penalties (Lab. Code §§ 2898, et seq.)

JURY TRIAL DEMANDED



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1 Plaintiff, José Diaz (hereafter “Plaintiff” or “Diaz”), on behalf of himself and all others
2 similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 8-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Smith Packing,
9 Inc., and Does 1 through 50, inclusive (collectively “Defendants”).

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
11 him and other similarly situated workers for unpaid wages, statutory penalties, interest, and
12 related relief. These claims are based on Defendants’ failures to:

13 (A) Pay all wages, including minimum, regular, overtime and doubletime
14 wages, earned for all hours worked at the correct rates of pay;

15 (B) Separately compensate for rest and recovery periods and other non-
16 productive time;

17 (C) Provide all meal periods;

18 (D) Authorize and permit all rest breaks;

19 (E) Pay premium wages for unprovided meal periods;

20 (F) Pay premium wages for unprovided rest breaks;

21 (G) Only deduct wages lawfully;

22 (H) Issue only accurate and complete itemized wage statements;

23 (I) Issue statements of the total hours of rest and recovery periods;

24 (J) Issue statements of sick leave available; and

25 (K) Timely pay wages upon termination of employment.

26 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
27 restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class
28 action.



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II. THE PARTIES

3. Plaintiff José Diaz is a resident of California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations § 11080 and an “aggrieved employee” within the meaning of Labor Code § 2699 (c). Defendant Smith Packing, Inc. is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

4. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

5. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act within the course and scope of such agency, employment, direction and control, and with the approval and ratification of each of the other Defendants.

6. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not compensating Plaintiff and the other Class Members or otherwise complying with their rights in accordance with applicable California labor laws as alleged herein.

7. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable laws as alleged herein.

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III. CLASS ALLEGATIONS

8. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure section 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

9. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California hourly and piece-rate workers, including general agricultural workers, individuals performing work comparable to the aforementioned, compensated comparably to the aforementioned, and individuals in similar positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

10. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

11. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

12. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime, meal period premium, rest period premium, rest and recovery, nonproductive time, reporting time, split shift, and vacation wages;

B. Whether Defendants unlawfully deducted wages from Class Members;

C. Whether Defendants failed to provide the Class Members with all meal



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1 periods in compliance with California law;

2 D. Whether Defendants failed to authorize and permit the Class Members to
3 take all rest periods in compliance with California law;

4 E. Whether Defendants knowingly and intentionally failed to provide the
5 class with accurate and complete itemized wage statements;

6 F. Whether Defendants willfully failed to provide the class with timely final
7 wages;

8 G. Whether Defendants engaged in unfair competition within the meaning of
9 Business and Professions Code sections 17200, et seq., with respect to the Class; and

10 H. Whether Class Members are entitled to restitution of money or property
11 that Defendants may have acquired from them through alleged Labor Code violations.

12 13. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
13 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
14 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
15 Code, the Wage Order, and the Business and Professions Code.

16 14. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
17 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
18 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
19 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
20 Members.

21 15. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
22 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
23 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
24 Plaintiff and absent Class Members.

25 16. **Superiority:** A class action is vastly superior to other available means for fair and
26 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
27 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
28 and efficiently prosecute their common claims in a single forum without the unnecessary



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1 duplication of effort and expense that numerous individual actions would entail. In addition, the
2 monetary amounts due to many individual Class Members are likely to be relatively small and
3 would thus make it difficult, if not impossible, for individual Class Members to both seek and
4 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
5 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
6 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

7 **IV. STATEMENT OF FACTS**

8 17. The Wage Order applies to “all persons employed in the industries handling
9 products after harvest whether paid on a time, piece rate, commission, or other basis...” Wage
10 Order, § 1. The Wage Order defines “Industries Handling Products After Harvest” to mean

11
12 grading, sorting, cleaning, drying, cooling, icing, packing, dehydrating, cracking,
13 shelling, candling, separating, slaughtering, picking, plucking, shucking,
14 pasteurizing, fermenting, ripening, molding, or otherwise preparing any
15 agricultural, horticultural, egg, poultry, meat, seafood, rabbit, or dairy product for
16 distribution, and includes all the operations incidental thereto.

17 Wage Order, § 2(H). At all relevant times during the applicable limitations period, the Smith
18 Packing “Employers, Diaz, and all of the Class Members were covered by the Wage Order
19 because the Defendants operated, and Diaz, and all of the Class Members worked for, one or more
20 establishments operated as general agricultural labor and picker. Accordingly, Diaz and all of the
21 other Class Members are entitled to the protections the Wage Order provides.

22 18. The Defendants employed Diaz from July 25, 2023 to August 21, 2023 and from
23 April 21, 2024 to October 16, 2024 in Salinas, CA in the position of general agricultural laborer.

24 19. At all relevant times, the Defendants issued wages to Diaz and all of the other
25 Class Members on a weekly (52 paychecks/year) basis and paid them by the hour, salary,
26 commission, or piece rate. At all relevant times, the Defendants classified Diaz and all of the other
27 Class Members as non-exempt employees entitled to the protections of the Labor Code and the
28 Wage Order.

20. At all relevant times, the Defendants failed to compensate Diaz and all of the other



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1 Class Members for all hours worked at the applicable minimum or regular rates of pay. Diaz and
2 the other Class Members often arrived at their worksites 15 minutes before their scheduled start
3 time. Their managers required them to start working immediately upon their arrival. The
4 Defendants, however, did not pay Diaz and the other Class Members for the first 15 minutes on
5 such workday. Also, as described further below, the Defendants required Diaz and the other Class
6 Members to work through meal periods off the clock, though the Defendants did not pay Diaz
7 and the other Class Members for the time worked during their meal periods.

8 21. At all relevant times, the Defendants failed to compensate Diaz and all of the other
9 Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a
10 week, and for the first eight hours of the seventh day of the workweek. the Defendants did not
11 pay Diaz and the other Class Members for the first 15 minutes of their workday. Also, the
12 Defendants required Diaz and the other Class Members to work through meal periods off the
13 clock, though the Defendants did not pay Diaz and the other Class Members for the time. Also,
14 the Defendants failed to pay the employees their overtime wages at the correct overtime premium
15 rates for all overtime hours worked.

16 22. At all relevant times, the Defendants failed to compensate Diaz and all of the other
17 Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over the
18 first eight of the seventh day of the workweek. the Defendants did not pay Diaz and the other
19 Class Members for the first 15 minutes of their workday. Also, the Defendants required Diaz and
20 the other Class Members to work through meal periods off the clock, though the Defendants did
21 not pay Diaz and the other Class Members for the time. Also, the Defendants failed to pay the
22 employees their doubletime wages at the correct doubletime premium rates for all doubletime
23 hours worked.

24 23. At all relevant times, the Defendants failed to provide Diaz and all of the other
25 Class Members with all timely 30-minute, off-duty meal periods. The Defendants often did not
26 allow Diaz and the other Class Members to begin a meal period until after Diaz and the other
27 Class Members had performed six or seven hours of work. Diaz and the other Class Members had
28 to wait for their managers' permission and announcement before they could take their meal and



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1 rest breaks. Additionally, the Defendants often interrupted Diaz and the other Class Members
2 with work demands during their meal period. For example, the Defendants' manager required
3 Diaz and the other Class Members to travel to their next worksites during their off-the-clock meal
4 periods. Further, the Defendants often required Diaz and the other Class Members to return to
5 work after only 20 minutes of their meal periods. The Defendants took these actions toward Diaz
6 and the other Class Members to meet customer contract schedules. The Defendants did not allow
7 Diaz and the other Class Members to record the beginning and ending of their meal periods for
8 purposes of payroll. Also, the Defendants often only permitted Diaz and the other Class Members
9 to take one meal period in a workday, even if it exceeded ten hours. The Defendants also failed
10 to pay premium wages for days on which they failed to provide Diaz and all of the other Class
11 Members with meal periods as required by law.

12 24. At all relevant times, the Defendants failed to authorize and permit Diaz and all of
13 the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
14 or major portion thereof. The Defendants often interrupted Diaz and the other Class Members
15 with work demands during their rest period. Further, the Defendants required Diaz and the other
16 Class Members to take their rest breaks in extreme heat and without sufficient water. Also, the
17 Defendants often only permitted Diaz and the other Class Members to take one rest break in a
18 workday, even if it exceeded seven hours. The Defendants also failed to permit and authorize
19 more than two (2) rest breaks even when Diaz and the other Class Members worked more than
20 10 hours in a workday. The Defendants also failed to pay premium wages for days on which they
21 failed to authorize and permit Diaz and all of the other Class Members to take rest breaks as
22 required by law.

23 25. At all relevant times, the Defendants failed to separately compensate Diaz and all
24 of the other Class Members for rest and recovery periods and other nonproductive time, and
25 related duties. The Defendants recorded work time of Diaz and the Class Members but did not
26 record all of the time that Diaz and the Class Members worked.

27 26. At all relevant times, the Defendants unlawfully deducted wages belonging to Diaz
28 and all of the other Class Members. The Defendants recorded the work time of Diaz and the Class



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Members but did not record all of the time that Diaz and the Class Members worked. Additionally, the Defendants arbitrarily deducted several hours from each paycheck of Diaz and the Class Members.

27. At all relevant times, the Defendants failed to issue to Diaz and all of the other Class Members complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the wage statements they issued to Diaz and all of the other Class Members the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all nonproductive time wages earned, all rest and recovery time, all rest and recovery time wages earned, all nonproductive time, and related information.

28. At all relevant times, the Defendants failed to provide Diaz and all of the other Class Members with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross and net wages paid for those activities during the pay period.

29. At all relevant times, the Defendants also failed to timely pay Diaz and all of the other Class Members all earned wages as described above during and at the conclusion of employment.

30. At all relevant times, the Defendants failed to maintain accurate employee records of Diaz and all of the other Class Members.

31. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practices and policies, Plaintiff and the Class Members were:

- A. Not provided with all off duty meal periods;
- B. Not authorized and permitted to take all rest break periods;
- C. Not paid one hour's pay for each workday in which Defendants failed to authorize and permit them to take one or more timely rest periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;



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1 E. Not paid all wages earned, including, but not limited to, minimum, regular,
2 overtime, and doubletime wages for work performed while clocked out;

3 F. Not indemnified for all necessary business expenditures incurred during
4 the discharge of their duties;

5 G. Not provided with accurate and complete wage statements; and

6 H. Not timely paid all earned and unpaid wages at the time their employment
7 ended.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE**
10 **CORRECT RATES**

11 **Lab. Code §§ 221, 226.2, 510, 1194, 1197, and 1198**

12 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

13 32. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 33. At all relevant times, Plaintiff and the Class Members have been non-exempt
15 employees entitled to the protections of both the Labor Code and the Wage Order.

16 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
17 **THE CORRECT RATES OF PAY**

18 34. Section 2(G) of the Wage Order defines “hours worked” as “the time during which
19 an employee is subject to the control of an employer, and includes all the time the employee is
20 suffered or permitted to work, whether or not required to do so.”

21 35. Section 3 of the Wage Order states:

22 (1) The following overtime provisions are applicable to employees 18 years
23 of age or over and to employees 16 or 17 years of age who are not required
24 by law to attend school and are not otherwise prohibited by law from
25 engaging in the subject work. Such employees shall not be employed more
26 than eight (8) hours in any workday or more than 40 hours in any
27 workweek unless the employee receives one and one-half (1 1/2) times
28 such employee’s regular rate of pay for all hours worked over 40 hours in
the workweek. Eight (8) hours of labor constitutes a day’s work.
Employment beyond eight (8) hours in any workday or more than six (6)
days in any workweek is permissible under the following conditions:

(2) **MANDATORY DAY OFF REQUIREMENT:** An employee may work up



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1 to a maximum of 72 hours in any workweek after which the employee
2 shall have a 24-hour period off duty, except that:

- 3 (a) In the grape and tree fruit industry the following key personnel:
4 receivers, loaders, fork lift operators, shipping clerks, and
5 maintenance workers, may be exempt from the mandatory day off
6 requirement; and
- 7 (b) In the cotton ginning industry and in the tree nut hulling and
8 shelling industry, all employees shall have the voluntary right to
9 be exempt from the mandatory day off provision in this order. Any
10 employee desiring to exempt himself/herself from the mandatory
11 day off provision may exercise that exemption by notifying the
12 employee's employer in writing. Any employee who wishes to
13 withdraw that exemption may do so by notifying the employer in
14 writing at least five (5) days in advance of the desired day off.
15 (This notice provision is not intended to be applicable to instances
16 of illness or emergencies); and
- 17 (c) In the exercise of any exemption from the mandatory day off
18 provided above or by action of the state labor commissioner,
19 (administrative exemptions from the mandatory day off are
20 permitted by Labor Code Section 1198.3 under certain conditions)
21 no employer shall discriminate against any employee who desires
22 to take 24 hours off after 72 hours worked in a workweek; and
- 23 (d) All employers who permit any employees to work more than 72
24 hours in a workweek must give each employee a copy of the
25 applicable provision for exemption, including subparagraph (c)
26 above in English and in Spanish, and post it at all times in a
27 prominently visible place; and

28 (3) Overtime hours shall be compensated at:

- (a) One and one-half (1 ½) times the employee's regular rate of pay
for all hours worked in excess of eight (8) hours up to and
including 12 hours in any workday, and for the first eight (8) hours
worked on the seventh (7th) consecutive day of work in a
workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in
excess of 12 hours in any workday and for all hours worked in
excess of eight (8) hours on the seventh (7th) consecutive day of
work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt



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1 full-time salaried employee shall be computed by using the employee's
2 regular hourly salary as one-fortieth (1/40) of the employee's weekly
3 salary.

4 36. Section 4 of the Wage Order requires an employer to pay non-exempt employees
5 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
6 an employer has actual or constructive knowledge that employees are working.

7 37. Labor Code section 510 states:

8
9 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
10 in one workday and any work in excess of 40 hours in any one workweek and the
11 first eight hours worked on the seventh day of work in any one workweek shall be
12 compensated at the rate of no less than one and one-half times the regular rate of
13 pay for an employee. Any work in excess of 12 hours in one day shall be
14 compensated at the rate of no less than twice the regular rate of pay for an
15 employee. In addition, any work in excess of eight hours on any seventh day of a
16 workweek shall be compensated at the rate of no less than twice the regular rate of
17 pay of an employee. Nothing in this section requires an employer to combine more
18 than one rate of overtime compensation in order to calculate the amount to be paid
19 to an employee for any hour of overtime work.

20 38. Labor Code section 1194 invalidates any agreement between an employer and an
21 employee to work for less than the minimum wage required under the applicable Wage Order.

22 39. Labor Code section 1197 makes it unlawful for an employer to pay an employee
23 less than the minimum wage required under the applicable Wage Order for all hours worked
24 during a payroll period.

25 40. Labor Code section 1198 makes it unlawful for an employer to employ an
26 employee under conditions that violate the Wage Order.

27 41. In conjunction, these provisions of the Labor Code require employers to pay non-
28 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
worked, including unrecorded hours when the employer knew or reasonably should have known
that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.)



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1 42. At all relevant times during the applicable limitations period, Defendants failed to
2 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
3 minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
4 doubletime hours, respectively, that they worked at the correct rates of pay.

5 43. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
6 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
7 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
8 rates of pay as required by California law.

9 **B. UNLAWFUL WAGE DEDUCTIONS**

10 44. Under Labor Code § 221, "It shall be unlawful for any employer to collect or
11 receive from an employee any part of wages theretofore paid by said employer to said employee."
12 The Defendants deducted wages from the wages earned by Diaz and all of the other Class
13 Members for in violation of Labor Code § 221.

14 45. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
15 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
16 deduction of wages belonging to Plaintiff and the other Class Members in violation of California
17 law.

18 **C. FAILURE TO PAY FOR REST AND RECOVERY PERIODS AND OTHER**
19 **NONPRODUCTIVE TIME**

20 46. In relevant part, Labor Code section 226.2 states

21 (a) For employees compensated on a piece-rate basis during a pay
22 period, the following shall apply for that pay period:

23 (1) Employees shall be compensated for rest and recovery
24 periods and other nonproductive time separate from any
25 piece-rate compensation.

26 ...

27 (3) (A) Employees shall be compensated for rest and
28 recovery periods at a regular hourly rate that is no less than
the higher of:



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(i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.

(ii) The applicable minimum wage.

47. At all relevant times during the applicable limitations period, the Defendants failed to separately compensate Diaz and all of the other Class Members for rest and recovery periods and other nonproductive time, and related duties. The Defendants recorded the work time of Diaz and the Class Members but did not record all of the time that Diaz and the Class Members worked.

48. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to pay Plaintiff and the other Class Members for rest and recovery periods and other nonproductive time as required by California law.

D. FAILURE TO PROVIDE SICK LEAVE

49. Labor Code section 233 states

Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5.

50. Labor Code section 246(a)(1) states

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

51. Labor Code section 246.5 states

(a) Upon the oral or written request of an employee, an employer shall



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provide paid sick days for the following purposes:

- (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.

...

- (c) (1) An employer shall not deny an employee the right to use accrued sick days ...

52. The Defendants failed to provide Diaz and all of the other Class Members with paid sick leave.

53. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to pay Plaintiff and the other Class Members sick leave as required by California law.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7 and 512

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

54. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

55. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

56. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

57. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the



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meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

58. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.



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59. In relevant part, California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

60. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

61. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants often did not allow Diaz and the other Class Members to begin a meal period until after Diaz and the other Class Members had performed six or seven hours of work. Diaz and the other Class Members had to wait for their managers' permission and announcement before they could take their meal and rest breaks. Additionally, the Defendants often interrupted Diaz and the other Class Members with work demands during their meal period. For example, the Defendants' manager required Diaz and the other Class Members to travel to their next worksites during their off-the-clock meal periods. Further, the Defendants often required Diaz and the other Class Members to return to work after only 20 minutes of their meal periods. The Defendants took these actions toward Diaz and the other Class Members to meet customer contract schedules. The Defendants



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1 did not allow Diaz and the other Class Members to record the beginning and ending of their meal
2 periods for purposes of payroll. Also, the Defendants often only permitted Diaz and the other
3 Class Members to take one meal period in a workday, even if it exceeded ten hours.

4 62. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
5 with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members
6 their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants
7 failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class
8 Members with timely meal periods.

9 63. Plaintiff is informed and believes and thereon alleges that, at all relevant times
10 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
11 which resulted in Defendants not providing the and the Class Members with all off-duty meal
12 periods required by California law.

13 64. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
14 suffered damages in amounts subject to proof to the extent they were not paid additional wages
15 owed for all meal periods not provided to them.

16 65. By reason of the above, Plaintiff and the Class Members are entitled to premium
17 wages for workdays in which one or more meal periods were not provided to them pursuant to
18 California Labor Code § 226.7.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

21 **Lab. Code § 226.7**

22 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

23 66. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

24 67. At all relevant times during the applicable limitations period, Plaintiff and the
25 Class Members have been employees of Defendants and entitled to the benefits and protections
26 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

27 68. In relevant part, California Labor Code § 1198 states:

28 The maximum hours of work and the standard conditions of labor



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1 fixed by the commission shall be the maximum hours of work and
2 the standard conditions of labor for employees. The employment
3 of any employee for longer hours than those fixed by the order or
4 under conditions of labor prohibited by the order is unlawful.

5 69. In relevant part, Section 12 of the Wage Order states:

6 (A) Every employer shall authorize and permit all employees to take
7 rest periods, which insofar as practicable shall be in the middle of
8 each work period. The authorized rest period time shall be based
9 on the total hours worked daily at the rate of ten (10) minutes net
10 rest time per four (4) hours or major fraction thereof. However, a
11 rest period need not be authorized for employees whose total daily
work time is less than three and one-half (3 ½) hours. Authorized
rest period time shall be counted as hours worked for which there
shall be no deduction from wages.

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

16 70. In relevant part, California Labor Code § 226.7 states:

17 (b) An employer shall not require an employee to work during
18 a meal or rest period mandated pursuant to an applicable
19 statute, or applicable regulation, standard, or order of the
20 Industrial Welfare Commission, the Occupational Safety
21 and Health Standards Board, or the Division of
Occupational Safety and Health.

22 (c) If an employer fails to provide an employee a meal period
23 or rest period in accordance with a state law, including, but
24 not limited to, an applicable statute or applicable
25 regulation, standard, or order of the Industrial Welfare
Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one
26 additional hour of pay at the employee's regular rate of
27 compensation for each work day that the meal or rest
28 period is not provided.



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1 71. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
2 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
3 of work, or major fraction thereof.

4 72. Defendants intentionally failed to authorize and permit Plaintiff and the Class
5 Members to take all 10-minute rest periods free from any work duties in accordance with the
6 Wage Order. The Defendants often interrupted Diaz and the other Class Members with work
7 demands during their rest period. Further, the Defendants required Diaz and the other Class
8 Members to take their rest breaks in extreme heat and without sufficient water. Also, the
9 Defendants often only permitted Diaz and the other Class Members to take one rest break in a
10 workday, even if it exceeded seven hours. The Defendants also failed to permit and authorize
11 more than two (2) rest breaks even when Diaz and the other Class Members worked more than
12 10 hours in a workday.

13 73. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
14 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
15 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
16 Plaintiff and the other Class Members to take timely rest periods.

17 74. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
18 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
19 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
20 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
21 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
22 to authorize and permit them to take 10-minute rest periods every four hours worked or major
23 fraction thereof.

24 75. Plaintiff is informed and believes and thereon alleges that, at all relevant times
25 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
26 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
27 take all rest breaks required by California law.

28 76. Defendants failed to provide Plaintiff with all required rest breaks in accordance



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1 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
2 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
3 which resulted in Defendants not providing the Class Members with all rest breaks required by
4 California law.

5 77. Defendants failed to pay Plaintiff the additional wages required by California
6 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
7 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
8 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
9 Class Members with additional wages for all rest breaks not provided to them as required by
10 California Labor Code § 226.7.

11 78. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
12 suffered damages in amounts subject to proof to the extent they were not paid additional wages
13 owed for all rest breaks not provided to them.

14 79. By reason of the above, Plaintiff and the Class Members are entitled to premium
15 wages for workdays in which one or more rest breaks were not provided to them pursuant to
16 California Labor Code § 226.7.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

19 **Lab. Code §§ 226 and 226.2**

20 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

21 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE** 22 **STATEMENTS**

23 80. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

24 81. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
25 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
26 statement showing:

27 A. Gross wages earned;

28 B. Total hours worked by the employee, except for any employee whose



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1 compensation is solely based on a salary and who is exempt from payment of overtime under
2 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

3 C. The number of piece rate units earned and any applicable piece rate if the
4 employee is paid on a piece-rate basis;

5 D. All deductions, provided that all deductions made on written orders of the
6 Employee may be aggregated and shown as one item;

7 E. Net wages earned;

8 F. The inclusive dates of the period for which the employee is paid;

9 G. The name of the employee and his or her social security number, except
10 that by January 1, 2008, only the last four digits of his or her social security number or an
11 employee identification number other than a social security number may be shown on the itemized
12 statement;

13 H. The name and address of the legal entity that is the employer; and

14 I. All applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.

16 82. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
17 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
18 the employer fails to provide accurate and complete information as required by California Labor
19 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
20 alone one or more of the following:

21 A. The amount of the gross wages or net wages paid to the employee during
22 the pay period or any of the other information required to be provided on the itemized wage
23 statement pursuant to California Labor Code § 226(a);

24 B. Which deductions the employer made from gross wages to determine the
25 net wages paid to the employee during the pay period;

26 C. The name and address of the employer and, if the employer is a farm labor
27 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
28 and address of the legal entity that secured the services of the employer during the pay period;



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1 D. The name of the employee and only the last four digits of his or her social
2 security number or an employee identification number other than a social security number; and

3 E. The number of piece-rate units earned and the piece rate.

4 83. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
5 means a reasonable person would be able to readily ascertain the information without reference
6 to other documents or information.

7 84. As alleged herein, at all relevant times during the applicable limitations period,
8 Defendants violated California Labor Code section 226 because they did not properly and
9 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
10 the corresponding number of hours worked at each rate by the employee and other requirements
11 of California Labor Code section 226. Defendants failed to state in the wage statements they
12 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
13 including, but not limited to, regular and overtime wages for work they performed off-the-clock
14 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
15 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
16 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
17 Members that state all minimum wages earned, all regular wages earned, all overtime wages
18 earned, all doubletime wages earned, all meal period premium wages earned, all rest break
19 premium wages earned, all unlawfully deducted wages, all nonproductive time wages earned, all
20 rest and recovery time, all rest and recovery time wages earned, all nonproductive time, and other
21 required information.

22 85. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
23 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
24 the other Class Members with accurate wage statements but intentionally provided wage
25 statements that Defendants knew were not accurate.

26 86. As a result of being provided with inaccurate wage statements by Defendants,
27 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
28 wage statements were violated and they were misled about the amount of wages they had actually



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1 earned and were owed. In addition, the absence of accurate information on their wage statements
2 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
3 and mathematical computations to determine the amounts of wages owed, has caused difficulty
4 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
5 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
6 and the other Class Members were not able to ascertain from the wage statements whether
7 Defendants complied with their obligations under California Labor Code section 226(a).

8 **B. FAILURE TO PROVIDE WAGE STATEMENTS WITH REST AND RECOVERY**
9 **TIME**

10 87. Labor Code section 226.2 states

11 (a) For employees compensated on a piece-rate basis during a pay
12 period, the following shall apply for that pay period:

13 ...

14 (2) The itemized statement required by subdivision (a) of
15 Section 226 shall, in addition to the other items specified
16 in that subdivision, separately state the following, to which
the provisions of Section 226 shall also be applicable:

17 (A) The total hours of compensable rest and recovery periods,
18 the rate of compensation, and the gross wages paid for those
19 periods during the pay period.

20 88. As a matter of policy and practice, the Defendants failed to provide Diaz and all
21 of the other Class Members with statements of the total hours of compensable rest and recovery
22 periods, the rate of compensation, and the gross wages paid for those activities during the pay
23 period.

24 **FIFTH CAUSE OF ACTION**

25 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

26 **(Lab. Code §§ 201, 202, and 203)**

27 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

28 89. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.



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1 90. At all relevant times during the applicable limitations period, Plaintiffs and the
2 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
3 of California Labor Code §§ 201, 202, and 203, and the Wage Order.

4 91. Labor Code § 201 provides that all earned and unpaid wages of an employee who
5 is discharged are due and payable immediately at the time of discharge.

6 92. Labor Code § 202 provides that all earned and unpaid wages of an employee who
7 quits after providing at least 72-hours notice before quitting are due and payable at the time of
8 quitting and that all earned and unpaid wages of an employee who quits without providing at least
9 72-hours notice before quitting are due and payable within 72 hours.

10 93. The Defendants failed to pay Diaz and all of the other Class Members whose
11 employment ended all of the earned but unpaid wages described above by the conclusion of their
12 employment with Diaz, including minimum wages, regular wages, overtime wages, doubletime
13 wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted
14 wages, nonproductive time, rest and recovery time, and other compensation.

15 94. By failing to pay such earned wages to Plaintiff and the Class Members,
16 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
17 § 201 or § 202.

18 95. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
19 and the Class Members all of their earned and unpaid wages (described above) have been willful
20 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
21 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
22 they have had the ability to comply with those legal requirements.

23 96. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of
24 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
25 penalties for each Class Member.

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27 ///

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SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

97. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

98. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

99. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

100. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of minimum wages, regular wages, overtime wages, doubletime wages, missed meal period premium wages, missed rest period premium wages, nonproductive time wages, rest and recovery period wages, unlawfully deducted wages, and comparable money and property.

101. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

102. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

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SEVENTH CAUSE OF ACTION

CIVIL PENALTIES

Lab. Code §§ 2698, *et seq.*

**(By Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California,
against all Defendants)**

103. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

104. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning July 25, 2024, and ending on the date that final judgment is entered in this action.

105. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

106. Defendants paid wages to employees on regular intervals. Defendants, however,



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1 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
2 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
3 intervals for all wages earned and all hours worked.

4 107. Labor Code section 1174, which also pertains to recordkeeping, states:

5 Every person employing labor in this state shall

6 ...

7 (c) Keep a record showing the names and addresses of all employees
8 employed and the ages of all minors.

9 (d) Keep, at a central location in the state or at the plants or
10 establishments at which employees are employed, payroll records
11 showing the hours worked daily by and the wages paid to, and the number
12 of piece-rate units earned by and any applicable piece rate paid to,
13 employees employed at the respective plants or establishments. These
14 records shall be kept in accordance with rules established for this purpose
15 by the commission, but in any case shall be kept on file for not less than
16 three years. An employer shall not prohibit an employee from maintaining
17 a personal record of hours worked, or, if paid on a piece-rate basis, piece-
18 rate units earned.

19 108. Labor Code section 1174.5 states:

20 Any person employing labor who willfully fails to maintain the records
21 required by subdivision (c) of Section 1174 or accurate and complete
22 records required by subdivision (d) of Section 1174, or to allow any
23 member of the commission or employees of the division to inspect records
24 pursuant to subdivision (b) of Section 1174, shall be subject to a civil
25 penalty of five hundred dollars (\$500).

26 109. Wage Order states,

27 (A) Every employer shall keep accurate information with respect to each
28 employee, including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.



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(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which, operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

...

(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

110. Defendants failed to compensate Plaintiff and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum and overtime wages earned, and all meal and rest break premium wages earned. As a result, Defendants have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Plaintiff and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

111. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

112. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

113. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.2, 226.7, 510, 512, 1174, 1194,



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1 1197, and 1198 during the applicable limitations period in the following amounts:

2 a. For violations of California Labor Code § 204, one hundred dollars
3 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
4 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
5 (penalty amounts established by California Labor Code § 210).

6 b. For violations of California Labor Code § 221, one hundred dollars
7 (\$100.00) for each Aggrieved Employee for each initial violation of Labor Code § 221, and two
8 hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent violation, or any
9 willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld
10 from each Aggrieved Employee (penalty amounts established by California Labor Code § 225.5).

11 c. For violations of California Labor Code § 226, \$250 for each Aggrieved
12 Employee for each initial violation of Labor Code section 226(a), and \$1,000 for each Aggrieved
13 Employee for each subsequent violation (penalties set by Labor Code
14 section 226.3); Alternatively, one hundred dollars (\$100) for each Aggrieved Employee per pay
15 period; Alternatively, twenty-five dollars (\$25) for each Aggrieved Employee per pay period if
16 the employee could promptly and easily determine from the wage statement alone the accurate
17 information specified by subdivision (a) of Section 226; and alternatively, fifty dollars (\$50) for
18 each aggrieved employee per pay period if the alleged violation resulted from an isolated,
19 nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four
20 consecutive pay periods.

21 d. For violations of California Labor Code §§ 510 and 512, fifty dollars
22 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
23 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
24 established by California Labor Code § 558).

25 e. For violations of California Labor Code § 1174, five hundred dollars
26 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
27 amounts established by Labor Code § 1174.5).

28 f. For violations of California Labor Code § 1197, one hundred dollars



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1 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
2 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
3 (regardless of whether the initial violations were intentionally committed) (penalty amounts
4 established by California Labor Code § 1197.1).

5 g. For violations of California Labor Code §§ 201, 202, 203, 226.2, 226.7,
6 1194, and 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
7 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
8 period for each subsequent violation (penalty amounts established by California Labor Code §
9 2699(f)(2)).

10 114. Plaintiff has complied with the procedures for bringing suit specified in California
11 Labor Code § 2699.3. By letter dated July 25, 2025, Plaintiff filed written notice online with the
12 Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail
13 to Defendants of the specific provisions of the California Labor Code alleged to have been
14 violated, including the facts and theories to support the alleged violations. A true and correct copy
15 of the notice to the LWDA dated July 25, 2025 is attached as Exhibit A. Plaintiff submitted his
16 LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response
17 within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA
18 will provide written notice to Plaintiff informing him that it does not intend to investigate these
19 allegations.

20 115. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
21 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
22 connection with their claims for civil penalties.

23 **PRAYER FOR RELIEF**

24 116. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for relief
25 and judgment against Defendants as follows:

26 A. An order that the action be certified as a class action with respect to
27 Plaintiff’s claims for violations of California law;

28 B. An order that Plaintiff be appointed class representative;



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- 1 C. An order that counsel for Plaintiff be appointed class counsel;
2 D. Unpaid wages, including minimum, regular, overtime, double-time, split
3 shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery
4 time, and reporting time wages;
5 E. Liquidated damages;
6 F. Statutory penalties, including waiting time penalties;
7 G. Civil penalties;
8 H. Restitution;
9 I. Declaratory relief;
10 J. Actual damages;
11 K. Pre-judgment interest;
12 L. Costs of suit;
13 M. Reasonable attorneys' fees; and
14 N. Such other relief as the Court deems just and proper.

15 **V. DEMAND FOR JURY TRIAL**

16 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
17 on all issues so triable.

18 Respectfully submitted,

19
20 THE SPIVAK LAW FIRM

21 Dated: September 29, 2025

22 By: 

23 DAVID G. SPIVAK
24 CAROLINE TAHMASSIAN,
25 Attorneys for Plaintiff, JOSÉ DIAZ,
26 and all others similarly situated



27 SPIVAK LAW
28 EMPLOYEE RIGHTS

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EXHIBIT A



THE SPIVAK LAW FIRM

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

July 25, 2025

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Jose Diaz / Smith Packing

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Jose Diaz (hereafter “Diaz” or “Complainant”) provides notice that Smith Packing, Inc., a California corporation, and related entities (collectively “the Smith Packing Employers” or “the Employers”) violated his rights and those of all other individuals the Smith Packing Employers have employed or otherwise contracted with in California as hourly and piece-rate workers, including general agricultural workers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1197, 1198, and related Labor Code provisions. On behalf of himself and all other Aggrieved Employees, Diaz hereby provides this notice to the Labor & Workforce Development Agency and the Smith Packing Employers and their agents and representatives.

At all relevant times, the Smith Packing Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Diaz and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 8-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

///
///

Statement of Facts

The Smith Packing Employers employed Diaz from July 25, 2023 to August 21, 2023 and from April 21, 2024 to October 16, 2024 in Salinas, CA in the position of general agricultural laborer.

At all relevant times, the Smith Packing Employers issued wages to Diaz and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour, salary, commission, or piece rate. At all relevant times, the Smith Packing Employers classified Diaz and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Smith Packing Employers failed to compensate Diaz and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. Diaz and the other Aggrieved Employees often arrived at their worksites 15 minutes before their scheduled start time. Their managers required them to start working immediately upon their arrival. The Smith Packing Employers, however, did not pay Diaz and the other Aggrieved Employees for the first 15 minutes on such workday. Also, as described further below, the Smith Packing Employers required Diaz and the other Aggrieved Employees to work through meal periods off the clock, though the Smith Packing Employers did not pay Diaz and the other Aggrieved Employees for the time worked during their meal periods.

The Smith Packing Employers failed to compensate Diaz and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Smith Packing Employers required Diaz and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. During such workdays and workweeks, the Smith Packing Employers did not pay Diaz and the other Aggrieved Employees for the first 15 minutes of their workday. Also, the Smith Packing Employers required Diaz and the other Aggrieved Employees to work through meal periods off the clock, though the Smith Packing Employers did not pay Diaz and the other Aggrieved Employees for the time. Also, the Smith Packing Employers failed to pay the employees their overtime wages at the correct overtime premium rates for all overtime hours worked.

The Smith Packing Employers failed to compensate Diaz and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Smith Packing Employers required Diaz and the other Aggrieved Employees to work over 12 hours per day and over eight hours on the seventh day of the same workweek. During such workdays and workweeks, the Smith Packing Employers did not pay Diaz and the other Aggrieved Employees for the first 15 minutes of their workday. Also, the Smith Packing Employers required Diaz and the other Aggrieved Employees to work through meal periods off the clock, though the Smith Packing Employers did not pay Diaz and the other Aggrieved Employees for the time. Also, the Smith Packing Employers failed to pay the employees their doubletime wages at the correct doubletime premium rates for all doubletime hours worked.

At all relevant times, the Smith Packing Employers failed to provide Diaz and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Smith Packing Employers often did not allow Diaz and the other Aggrieved Employees to begin a meal period until after Diaz and the other Aggrieved Employees had performed six or seven hours of work. Diaz and the other Aggrieved Employees had to wait for their managers' permission and announcement before they could take their meal and rest breaks. Additionally, the Smith Packing Employers often interrupted Diaz and the other Aggrieved Employees with work demands during their meal period. For example, the Smith Packing Employers' manager required Diaz and the other Aggrieved Employees to travel to their next worksites during their off-the-clock meal periods. Further, the Smith Packing Employers often required Diaz and the other Aggrieved Employees to return to work after only 20 minutes of their meal periods. The Smith Packing Employers took these actions toward Diaz and the other Aggrieved Employees to meet customer contract schedules. The Smith Packing Employers did not allow Diaz and the other Aggrieved Employees to record the beginning and ending of their meal periods for purposes of payroll. Also, the Smith Packing Employers often only permitted Diaz and the other Aggrieved Employees to take one meal period in a workday, even if it exceeded ten hours. The Smith Packing Employers also failed to pay premium wages for days on which they failed to provide Diaz and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Smith Packing Employers failed to authorize and permit Diaz and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Smith Packing Employers often

interrupted Diaz and the other Aggrieved Employees with work demands during their rest period. Further, the Smith Packing Employers required Diaz and the other Aggrieved Employees to take their rest breaks in extreme heat and without sufficient water. Also, the Smith Packing Employers often only permitted Diaz and the other Aggrieved Employees to take one rest break in a workday, even if it exceeded seven hours. The Smith Packing Employers also failed to permit and authorize more than two (2) rest breaks even when Diaz and the other Aggrieved Employees worked more than 10 hours in a workday. The Smith Packing Employers also failed to pay premium wages for days on which they failed to authorize and permit Diaz and all of the other Aggrieved Employees to take rest breaks as required by law.

The Smith Packing Employers failed to separately compensate Diaz and all of the other Aggrieved Employees for rest and recovery periods, including but not limited to , and related duties. The Smith Packing Employers recorded the work time of Diaz and the Aggrieved Employees but did not record all of the time that Diaz and the Aggrieved Employees worked.

The Smith Packing Employers unlawfully deducted wages belonging to Diaz and all of the other Aggrieved Employees. The Smith Packing Employers recorded the work time of Diaz and the Aggrieved Employees but did not record all of the time that Diaz and the Aggrieved Employees worked. Additionally, the Smith Packing Employers arbitrarily deducted several hours from each paycheck of Diaz and the Aggrieved Employees.

At all relevant times, the Smith Packing Employers failed to issue to Diaz and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Smith Packing Employers knowingly and intentionally failed to state on the wage statements they issued to Diaz and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all rest and recovery time, all rest and recovery time wages earned, and other required information.

The Smith Packing Employers also failed to timely pay Diaz and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Smith Packing Employers failed to provide Diaz and all of the other Aggrieved Employees with an adequate number of suitable seats.

The Smith Packing Employers failed to maintain accurate employee records of Diaz and all of the other Aggrieved Employees.

For the reasons stated herein, Diaz alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Smith Packing Employers failed to pay Diaz and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Smith Packing Employers failed to separately compensate Diaz and all of the other Aggrieved Employees for rest and recovery periods;
- (c) The Smith Packing Employers failed to provide Diaz and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (d) The Smith Packing Employers failed to authorize and permit Diaz and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (e) The Smith Packing Employers failed to compensate Diaz and all of the other Aggrieved Employees at one hour's pay for each day in which the Smith Packing Employers failed to provide them with one or more meal periods as required by law;
- (f) The Smith Packing Employers failed to compensate Diaz and all of the other Aggrieved Employees at one hour's pay for each day in which the Smith Packing Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (g) The Smith Packing Employers unlawfully deducted wages belonging to Diaz and all of the other Aggrieved Employees;

- (h) The Smith Packing Employers knowingly and intentionally failed to provide Diaz and all of the other Aggrieved Employees with accurate and complete wage statements;
- (i) The Smith Packing Employers failed to provide Diaz and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period;
- (j) The Smith Packing Employers willfully failed to timely pay Diaz and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Smith Packing Employers and when their employment ended;
- (k) The Smith Packing Employers failed to provide Diaz and all of the other Aggrieved Employees with toilet and storage facilities, change rooms, and acceptable work temperatures;
- (l) The Smith Packing Employers failed to provide Diaz and all of the other Aggrieved Employees with an adequate number of suitable seats; and
- (m) The Smith Packing Employers failed to maintain accurate employment records pertaining to Diaz and all of the other Aggrieved Employees.

Accordingly, Diaz now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Smith Packing Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the industries handling products after harvest whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Industries Handling Products After Harvest" to mean,

grading, sorting, cleaning, drying, cooling, icing, packing, dehydrating, cracking, shelling, candling, separating, slaughtering, picking, plucking, shucking,

pasteurizing, fermenting, ripening, molding, or otherwise preparing any agricultural, horticultural, egg, poultry, meat, seafood, rabbit, or dairy product for distribution, and includes all the operations incidental thereto.

Wage Order, § 2(H). At all relevant times during the applicable limitations period, the Smith Packing Employers, Diaz, and all of the Aggrieved Employees were covered by the Wage Order because the Smith Packing Employers operated, and Diaz, and all of the Aggrieved Employees worked for, one or more establishments operated for the purpose of picking, preparing agricultural, preparing poultry, preparing meat, preparing seafood, packing product for distribution, and operations incidental thereto. Accordingly, Diaz and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible under the following conditions:
- (2) **MANDATORY DAY OFF REQUIREMENT:** An employee may work up to a maximum of 72 hours in any workweek after which the employee shall have a 24-hour period off duty, except that:
 - (a) In the grape and tree fruit industry the following key personnel: receivers, loaders, fork lift operators, shipping clerks, and maintenance workers, may be exempt from the mandatory day off requirement; and
 - (b) In the cotton ginning industry and in the tree nut hulling and shelling industry, all employees shall have the voluntary right to be exempt from the mandatory day off provision in this order. Any employee desiring to exempt himself/herself from the mandatory day off provision may exercise that exemption by notifying the employee's employer in writing. Any employee who wishes to

withdraw that exemption may do so by notifying the employer in writing at least five (5) days in advance of the desired day off. (This notice provision is not intended to be applicable to instances of illness or emergencies); and

- (c) In the exercise of any exemption from the mandatory day off provided above or by action of the state labor commissioner, (administrative exemptions from the mandatory day off are permitted by Labor Code Section 1198.3 under certain conditions) no employer shall discriminate against any employee who desires to take 24 hours off after 72 hours worked in a workweek; and
- (d) All employers who permit any employees to work more than 72 hours in a workweek must give each employee a copy of the applicable provision for exemption, including subparagraph (c) above in English and in Spanish, and post it at all times in a prominently visible place; and

(3) Overtime hours shall be compensated at:

- (a) One and one-half ($1 \frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth ($1/40$) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

As discussed above, at all relevant times during the applicable limitations period, the Smith Packing Employers failed to compensate Diaz and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Diaz now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

///

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee

with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational

Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As discussed above, at all relevant times, the Smith Packing Employers failed to provide Diaz and all of the other Aggrieved Employees with all timely, duty-free, 30-minute meal periods. The Smith Packing Employers denied Diaz and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Also, the Smith Packing Employers often only permitted Diaz and the other Aggrieved Employees to take one meal period in a workday, even if it exceeded ten hours. Furthermore, the Smith Packing Employers failed to pay premium wages for days on which they failed to provide Diaz and all of the other Aggrieved Employees with timely meal periods. Accordingly, Diaz now seeks civil penalties for these Labor Code violations that the Smith Packing Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(G) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial

Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As disused above, at all relevant times, the Smith Packing Employers failed to authorize and permit Diaz and all of the other Aggrieved Employees to take all ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Moreover, the Smith Packing Employers failed to pay Diaz and all of the other Aggrieved Employees premium wages on workdays the Smith Packing Employers failed to provide Diaz and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Diaz now seeks civil penalties for these Labor Code violations that the Smith Packing Employers have committed against him and all of the other Aggrieved Employees as follows:

- 1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
- 2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” As discussed above, the Smith Packing Employers deducted wages from the wages earned by Diaz and all of the other Aggrieved Employees in violation of Labor Code § 221. Accordingly, Diaz seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employer may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;

7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Smith Packing Employers violated Labor Code section 226 because they did not properly, completely, and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Smith Packing Employers failed to state in the wage statements they issued to Diaz and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Smith Packing Employers knowingly and intentionally failed to state on the wage statements they issued to Diaz and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all rest and recovery time, all rest and recovery time wages earned, and other required information. Accordingly, Diaz seeks civil penalties for the Labor Code violations that the Smith Packing Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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Failure to Provide Wage Statements with Rest and Recovery Time
(Lab. Code § 226.2)

Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

...

- (2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

- (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

Labor Code section 2699.3(c) allows employers the chance to “cure” violations of provisions not listed under 2699.5 within 33 days of the postmark date of the aggrieved employee’s written notice to the LWDA. Section 226.2 is not a provision listed under 2699.5.

Labor Code section 2699(d) states,

For purposes of this part, “cure” means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole.

Labor Code section 2699.3(c)(B)(ii) limits this right to once in a 12-month period. After the employer cures the violation, it must give written notice, along with a description of actions taken, by certified mail to the aggrieved employee or representative and the agency within the 33-day period.

As discussed above, at all relevant times during the applicable limitations period, the Smith Packing Employers failed to provide Diaz and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those activities during the pay period. Accordingly, Diaz now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Smith Packing Employers failed to compensate Diaz and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, rest and recovery time, and related compensation, at the intervals stated above. As a result, the Smith Packing Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Diaz now seeks civil penalties for the Labor Code violations that the Smith Packing Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the 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.

The Smith Packing Employers failed to pay Diaz and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Diaz, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, rest and recovery time and related compensation. By failing to pay Diaz and all of the other Aggrieved Employees as set forth above at the end of employment, the Smith Packing Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Diaz seeks civil penalties from the Smith Packing Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

**Failure to Provide Toilet and Storage Facilities, Lockers, Change Rooms, and
Acceptable Work Temperatures**
(Lab. Code §§ 1198 and 2350)

Labor Code § 2350 states,

Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

Section 13 of Wage Order states,

- (A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

- (B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

Section 15(C) of Wage Order states, “A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.”

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

Throughout the relevant time period, the Smith Packing Employers failed to provide any toilet facilities for use by Diaz and all of the other Aggrieved Employees within reasonable access. Accordingly, on behalf of himself and aggrieved employees, Diaz demands that the Smith Packing Employers cure the violations of Labor Code § 2350 and provide sufficient toilets to all aggrieved employees. The Smith Packing Employers failed to provide acceptable temperatures for the work areas it expected Diaz and all of the other Aggrieved Employees to perform their job duties in. If within 33 days of this notice, the Smith Packing Employers fail to notify my office in writing by certified mail that they have cured the violations of Labor Code § 2350 and the Wage Order mentioned above, Diaz, on behalf of himself and all of the other Aggrieved Employees, will commence a civil action and seek civil penalties from the Smith Packing Employers as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 2350, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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Failure to Provide an Adequate Number of Suitable Seats
(Lab. Code § 1198)

Section 14 of the Wage Order states as follows:

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Smith Packing Employers did not place an adequate number of suitable seats in reasonable proximity to their work area, nor did they permit Diaz and all of the other Aggrieved Employees to use such seats when it did not interfere with the performance of their duties.

Pursuant to Labor Code Sections 2699(a) and (f), Diaz, on behalf of himself and all of the other Aggrieved Employees, seeks \$100.00 for each employee per pay period for each initial violation of § 1198 and \$200.00 for each employee per pay period for each subsequent violation of § 1198 (penalty amounts established by Labor Code Section 2699(f)(2)).

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Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Smith Packing Employers failed to compensate Diaz and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all rest and recovery time, and all rest and recovery time wages earned. As a result, the Smith Packing Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Diaz and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Diaz

LWDA / The Smith Packing Employers

Re: José Díaz

July 25, 2025

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seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that José Díaz will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Glenn Spivak, Esq.

david@spivaklaw.com

cc: Mr. Jose Diaz

Mr. Walter Haines, Esq.

Smith Packing, Inc.

c/o Ms. Stephanie Gonzalez, Esq.

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State of California,
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2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

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EXECUTED on Monday, September 29, 2025, at Burbank, California.

Emily H. Ly