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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

ALVINO NAVARRO ZEFERINO; GERRARDO ZEFERINO; CRECENCIA CAMARILLO; as individuals, on behalf of themselves and others similarly situated

PLAINTIFFS,

v.

OLD TIME FARMING, INC.; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 23CV04270

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

THIRD AMENDED COMPLAINT

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1194.2, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions Code § 17200
7. Penalties Pursuant to Labor Code §2699, et seq.

Plaintiffs ALVINO NAVARRO ZEFERINO; GERRARDO ZEFERINO; CRECENCIA CAMARILLO, AGUSTIN LOPEZ ZERFERINO; HELIDA LOPEZ HERNANDEZ; FRANCISCA ORTIZ TELLEZ; SEBASTIAN ZEFERINO; BERNARDINO HERNANDEZ; ELIA VASQUEZ; ANGELA DEONIDLE CLEMENTE; SANTOS MORELOS DE JESUS; SANTOS ZEFERINO ROJAS; IGNACIA PABLO LIGARIO; HECTOR ZEFERINO LIGARIO; RUBEN ALEJO FLORES; MARIA ZEFERINO PABLO; (collectively, "Plaintiffs"), and on behalf of the people of the State of California and as an "aggrieved employee" under Labor Code Private Attorneys General Act of 2004, §2699, *et seq*. (hereafter "PAGA"), complain of Defendant OLD TIME FARMING, INC. ("Defendant") and each of them, as follows:

I.

INTRODUCTION

1. Plaintiffs worked for Defendant, either directly or through various Farm Labor Contractors ("FLC"), in or near Santa Barbara County, California as seasonal agricultural workers. Plaintiffs worked in the cultivation and harvest of strawberries, and doing other agricultural work, on land owned, leased, managed, and/or operated, harvested, or otherwise made productive by Defendant. Plaintiffs members were paid on a piece rate basis for work picking strawberries.

2. From at least four (4) years prior to the filing of this action continuing to the present, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiffs at the appropriate rate of pay as follows:

a. Plaintiffs were not properly compensated for all hours worked because Defendant failed to pay Plaintiffs for each and every hour worked. Plaintiffs routinely worked "off the clock" and performed compensable activities before, during, and after each working shift for which no pay was provided. With regard to pre-shift work, Plaintiffs are required to report to work prior to their scheduled shift and perform work. Specifically, Plaintiffs spend time collecting boxes and materials, among other tasks, while "off the clock". In the middle of their shifts, Defendant required Plaintiffs to travel between blocks or fields once done picking at one block or field. With regard to post-shift work, at the end of each working shift, Plaintiffs are required to wait in line to turn in their boxes and/or are still picking strawberries to complete their boxes after their scheduled shift has ended. As such, Defendant failed to compensate Plaintiffs for all hours worked at the appropriate rate of pay.

b. Furthermore, Plaintiffs work Monday through Saturday. At times, Plaintiffs work on Sundays when there are a lot of strawberries to pick. Plaintiffs are not compensated for overtime nor the extra hours that they work on Sunday. Defendant fails to pay pay wages for all hours worked including failing to pay overtime rate for the first eight (8) hours that Plaintiffs work on the seventh (7th) day. As such Plaintiffs were paid less than their proper compensation.

3. From at least four (4) years prior to the filing of this action and continuing to the present, Defendant failed to apprise Plaintiffs of their rights associated with meal periods and failed to provide timely meal periods. Defendant has had a consistent policy of: (1) failing to provide Plaintiffs timely meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the complaint meal period was not provided, as required by California state wage and hour laws.

4. For at least four (4) years prior to the filing of this action and continuing to the present, Defendant has failed to reimburse Plaintiffs the cost of using their personal tools and vehicles necessary to perform their job duties. The work performed by Plaintiffs necessitated the use of rain boots, carts, gloves, jar rings, and other tools. Defendant fails to reimburse Plaintiffs for the costs associated with purchasing and using these carts, tires, gloves, rain boots, and jar rings. Additionally, as discussed above, Defendant required Plaintiffs to use their own vehicles to travel between fields in the middle of their shifts. Plaintiffs were not reimbursed for their vehicle use, such as gas, for travel between Defendant's fields or blocks during the course of a work shift. By failing to provide Plaintiffs with the necessary tools and transportation reimbursement, Defendant has burdened Plaintiffs with the cost of tools and using their own vehicles to perform required work.

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

6. For at least three (3) years prior to the filing of this action continuing to the present, Defendant has failed to pay Plaintiffs all wages due at the time they quit or are laid off or discharged.

7. Plaintiffs, on behalf of themselves bring this action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802; Wage Order 14-2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid wages/overtime, meal period penalties, unreimbursed expenses, accurate itemized wage statements, other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

8. Plaintiffs, on behalf of themselves, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

9. For at least one (1) year prior to the date of the letter sent to the Labor Workforce and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph 2 above, Defendants have violated Labor Code provisions, as detailed below, giving rise to a claim pursuant to PAGA. Plaintiffs, on behalf of themselves and all aggrieved employees presently or formerly employed by Defendant during the liability period as defined in their PAGA notice letter (*see* Exhibit "1"), brings this representative action pursuant to Labor Code §2699, et seq. seeking penalties for Defendants' failure to pay all wages and/or overtime, failure to provide lawful meal period penalties, failure to reimburse business expenses, failure to provide accurate itemized wage statements, and failure to provide wages at the time of termination.

II.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds $25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

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

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

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

III.

PARTIES

A. PLAINTIFFS

14. Plaintiffs ALVINO NAVARRO ZEFERINO; GERRARDO ZEFERINO; CRECENCIA CAMARILLO, AGUSTIN LOPEZ ZERFERINO; HELIDA LOPEZ HERNANDEZ; FRANCISCA ORTIZ TELLEZ; SEBASTIAN ZEFERINO; BERNARDINO HERNANDEZ; ELIA VASQUEZ; ANGELA DEONIDLE CLEMENTE; SANTOS MORELOS DE JESUS; SANTOS ZEFERINO ROJAS; IGNACIA PABLO LIGARIO; HECTOR ZEFERINO LIGARIO; RUBEN ALEJO FLORES; MARIA ZEFERINO PABLO are residents of California.

15. Plaintiffs were regularly required to:

a. Work without being paid for all hours worked;

b. Work without being paid at the appropriate overtime rate;

c. Work without being provided compliant meal periods;

d. Work without being reimbursed for necessary tools/equipment and using personal vehicles for work related purposes;

e. Work without Defendant providing accurate itemized wage statements.

16. Defendant willfully failed to compensate Plaintiffs for wages at the termination of their employment with Defendant.

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

18. Plaintiffs and all aggrieved employees as defined in their notice letter to the LWDA are "aggrieved employees" within the meaning of Labor Code § 2699, *et seq*. (*see* Labor Code §2699(c).)

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B. <u>DEFENDANT</u>

19. Defendant OLD TIME FARMING, INC. is believed to be a California corporation operating within the State of California. Defendant's corporate address, according to the Secretary of State website[1] is believed to be 1141 Tama Lane Santa Maria, CA 93455. Upon information and belief, Defendant employed Plaintiffs and similarly situated persons as agricultural employees on an hourly or piece rate basis within California. Defendant has done and does business throughout the State of California.

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

21. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendant. Furthermore, Defendant in all respects acted as the

[1] https://bizfileonline.sos.ca.gov/search/business

employer and/or joint employer of Plaintiffs.

22. Furthermore, Defendant acted in all respects as the employers or joint employers of Plaintiffs. Defendant, and each of them, exercised control over the wages, hours or working conditions of Plaintiffs, or suffered or permitted Plaintiffs to work, or engaged, thereby creating a common law employment relationship, with Plaintiffs. Therefore, Defendant, and each of them, employed or jointly employed Plaintiffs.

23. Defendant is engaged in the operation of agricultural fields for production of strawberries, as described above. Defendant also owns and operates packing facilities in or near Santa Barbara County, California, to sort, grade, package and distribute crops harvested by Plaintiffs. At all times mentioned herein, Defendant employed Plaintiffs as non-exempt employees in Defendant's agricultural field operations. For a period of time, Plaintiffs were paid on a piece-rate basis.

24. Defendant is, and during the relevant period has been, engaged in the business of cultivating, harvesting and packing crops as described above.

IV.

FACTUAL BACKGROUND

25. Plaintiffs are, and at all relevant times have been, non-exempt employees within the meaning of the California Labor Code § 500, *et seq*., and the rules and regulations of California Industrial Welfare Commission ("IWC") Wage Order No. 14-2001 [8 Cal. Code of Regs. § 11140] ("IWC Wage Order 14"), working in the cultivation and harvest of crops on land owned, leased, managed and/or operated, harvested or otherwise made productive by Defendant in or near Santa Barbara County, California. For a period of time, Plaintiffs were paid on a piece rate for work picking strawberries.

26. Upon information and belief, Plaintiffs are covered by California Industrial Welfare Commission Occupational Wage Order No. 14-2001 (Title 8 Cal. Code of Regs. § 11040).

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

a. Plaintiffs were not properly compensated for all hours worked because Defendant failed to pay Plaintiffs for each and every hour worked. Plaintiffs routinely worked “off the clock” and performed compensable activities before, during, and after each working shift for which no pay was provided. With regard to pre-shift work, Plaintiffs are required to report to work prior to their scheduled shift and perform work. Specifically, Plaintiffs spend time collecting boxes and materials, among other tasks, while “off the clock”. In the middle of their shifts, Defendant required Plaintiffs to travel between blocks or fields once they are done picking at one block or field. With regard to post-shift work, at the end of each working shift Plaintiffs are required to wait in line to turn in their boxes and/or are still picking strawberries to complete their boxes after their scheduled shift has ended. As such, Defendant failed to compensate Plaintiffs for all hours worked.

b. Furthermore, Plaintiffs work Monday through Saturday. At times, Plaintiffs work on Sundays when there are a lot of strawberries to pick. Plaintiffs are not compensated for overtime nor the extra hours that they work on Sunday. Defendant fails to pay at the overtime rate for the first eight (8) hours that Plaintiffs work on the seventh (7th) day. As such Plaintiffs were paid less than their proper compensation.

28. For at least four (4) years prior to the filing of this action and continuing to the present, Plaintiffs have been forced by Defendant to work over five (5) hours in one day without being provided a thirty (30) minute timely meal break and not being compensated one (1) hour of pay at their regular rate of compensation for each workday that a meal period was not provided or provided after five (5) hours, all in violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders. Defendant also failed to inform Plaintiffs of their right to take compliant meal periods by way of a lawful policy.

29. On a regular and consistent basis, Plaintiffs have not been properly reimbursed expenses associated with the cost of tools/equipment and using their own vehicles to perform required work.

30. For at least one (1) year prior to the filing of this action continuing to the present, Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 14-2001 and Labor Code § 226(a) by failing to issue accurate itemized wage statements reporting

total hours worked by Plaintiffs and the appropriate rate of pay.

31. Defendant willfully failed to pay wages and compensation, when Plaintiffs quit or are laid off or were discharged. This failure was willful, without legal justification, and interfered with Plaintiffs' rights.

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

V.

FIRST CAUSE OF ACTION

FAILURE TO PAY WAGES AND/OR OVERTIME UNDER LABOR CODE §§ 510, 1194, 1194.2, AND 1199

33. Plaintiffs, realleges and incorporates by reference all previous paragraphs.

34. Labor Code §§ 510, 1194, 1194.2 and 1199 requires an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

35. Labor Code § 510(a) overtime hours must be compensated at: (a) One and one-half (1.5) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (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.

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

37. With regard to pre-shift work, Plaintiffs are required to report to work prior to their scheduled shift and perform work. Specifically, Plaintiffs spend time collecting boxes and

materials, among other tasks, while “off the clock”. These activities and time are compensable, but Defendant fail to pay Plaintiffs for this time worked.

38. In the middle of their shifts, Defendant required Plaintiffs a to travel between blocks or fields once they are done picking at one field. Plaintiffs use their own vehicles to travel between fields approximately three (3) to four (4) times per shift. When using their own vehicles to travel between blocks or fields, Plaintiffs spend about fifteen (15) minutes traveling between blocks or fields. When walking to travel between blocks or fields, Plaintiffs spend about 10-15 minutes traveling between blocks or fields. Plaintiffs are not compensated for this travel time, nor are they reimbursed for their use of their personal vehicles when used to perform required work.

39. With regard to post-shift work, at the end of each working shift Plaintiffs are required to wait several minutes in line to report their boxes for the day or finish picking fruit for the day. Specifically, Plaintiffs are required to wait approximately at least five (5) minutes to ten (10) minutes or as long as thirty (30) minutes to forty (40) minutes after their scheduled shift has ended turning in their boxes of picked fruit for the workday. Further, while some workers are waiting in line to turn in their boxes, other workers are still picking strawberries. Plaintiffs are clocked out of their scheduled shift at the time that the first worker turns in their box at the end of the working day despite the fact that Plaintiffs still need to wait in line to turn in their boxes and/or are still picking strawberries to complete their boxes. This time spent picking fruit and/or waiting in line to turn in boxes was performed after being “clocked out” and as such, Plaintiffs are not compensated for this time worked even though this time is compensable.

40. Furthermore, Plaintiffs work Monday through Saturday. At times, Plaintiffs work on Sundays when there are a lot of strawberries to pick. Plaintiffs are not compensated for overtime nor the extra hours that they work on Sunday. Defendant fails to pay at the overtime rate for the first eight (8) hours that Plaintiffs work on the seventh (7th) day. As such Plaintiffs were paid less than their proper compensation.

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

1194 and 1199.

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

VI.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO LABOR CODE § 226.7 AND LABOR CODE § 512

43. Plaintiffs, realleges and incorporates by reference all previous paragraphs.

44. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

45. Defendant failed to maintain a policy informing Plaintiffs of these rights.

46. Plaintiffs consistently worked shifts over five (5) hours.

47. Defendant failed to provide Plaintiffs with timely meal periods of not less than thirty (30) minutes within the first five hours of work as required by the Labor Code during the relevant time period.

48. Defendant has had a consistent policy of failing to pay Plaintiffs one (1) hour of pay at the employees' regular rate of compensation for each workday that all required meal periods were not provided, as required by California state wage and hour laws. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of bonus pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those bonus payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses, commissions, etc.), and cannot simply be paid at an employee's base hourly rate. Defendant has had a consistent policy of failing to pay meal period premiums in

compliance with California law.

49. Pursuant to Labor Code § 226.7, Plaintiffs are entitled to damages in an amount equal to one (1) hour of wages at the regular rate of compensation per missed meal break, per day in a sum to be proven at trial.

VII.

THIRD CAUSE OF ACTION

FAILURE TO REIMBURSE EXPENSES PURSUANT TO LABOR CODE § 2802

50. Plaintiffs, realleges and incorporates by reference all previous paragraphs.

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

52. Plaintiffs are entitled to reimbursement of all business-related expenses they incurred throughout the duration of their employment. Specifically, Defendant has failed to reimburse Plaintiffs the cost of using their personal tools/equipment and vehicles for business related purposes.

53. Plaintiffs are required to purchase one (1) cart for strawberries per season, which cost approximately $30. Plaintiffs also spend approximately $20 to replace a cart's tire. Prior to 2021, Plaintiffs also purchased boxes of gloves to pick fruit, which cost approximately $18. Starting in 2021, Defendant finally provided a pair of gloves per day to Plaintiffs. However, these gloves are poor quality and did not allow the employees to perform their work adequately. Plaintiffs also purchased their own rain boots and jar rings to perform their job duties. Defendant fails to reimburse Plaintiffs for the costs associated with purchasing and using these carts, tires, gloves, rain boots, and jar rings.

54. Additionally, as discussed above, Defendant required Plaintiffs to use their own vehicles to travel between fields in the middle of their shifts. Plaintiffs were not reimbursed for their vehicle use, such as gas, for travel between Defendant's fields or blocks during the course of a work shift.

55. By failing to provide Plaintiffs with the necessary tools/equipment and

transportation reimbursement, Defendant has burdened Plaintiffs with the cost of tools/equipment and using their own vehicles to perform required work.

56. As a result of the unlawful acts of Defendant, Plaintiffs have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

VIII.

FOURTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226(A)

57. Plaintiffs, realleges and incorporates by reference all previous paragraphs.

58. California Labor Code § 226(a) requires employers to issue wage statements that accurately report total hours worked, accurately report appropriate rates of pay and the corresponding number of hours worked at each hourly rate. (Labor Code §§ 226(a)(2), and (9).)

59. Plaintiffs are issued wage statements that do not include the total hours worked by the employee.

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

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

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

IX.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES UNDER LABOR CODE § 203

63. Plaintiffs, realleges and incorporates by reference all previous paragraphs.

64. Labor Code § 203(a) provides: If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than thirty (30) days.

65. Plaintiffs, no longer work for Defendant. Furthermore, Defendant's work is seasonal. This means that Plaintiffs did not receive all wages owed when they were discharged, laid off, or quit each season.

66. Defendant has failed to pay Plaintiffs all wages owed to them at the time they quit or are laid off or discharged, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

67. Defendant has failed to pay Plaintiffs a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiffs are entitled to a penalty in the amount of Plaintiffs' a daily wage multiplied by thirty (30) days.

X.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200

68. Plaintiffs, realleges and incorporates by reference all previous paragraphs.

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

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

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

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

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

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

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

76. As a proximate result of the above-mentioned acts of Defendant, Plaintiffs have been damaged in a sum as may be proven.

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

XI.

SEVENTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

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

2. As a result of the acts alleged above and specifically incorporated herein, Plaintiffs seek penalties under Labor Code §2699, *et seq*. use of Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802, and Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

3. Plaintiffs bring this representative action on behalf of themselves and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by Old Time Farming, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the 'Emergency Rules Related to COVID-19. ("aggrieved employees")

4. As a result of the acts alleged above, Plaintiffs, on behalf of themselves and all other aggrieved employees, seeks penalties under Labor Code section 2699, et seq. because of Defendant's violation of IWC Wage Order 4-2001, for which a civil penalty applies under PAGA.

5. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code § 2699, *et seq*. because of Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802; Wage Order 14-2001, which call for civil penalties.

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

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

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

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

8. Pursuant to Labor Code § 2699.3(a)(1), Plaintiffs uploaded a notice letter to the LWDA[2] and mailed a letter by certified mail to each of the Defendant's entity addresses and Defendant's agent for service of process, as proscribed by the Code on September 27, 2023, describing Defendants' conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802; Wage Order 14-2001. (*see* Exhibit "1.") Additionally, Plaintiffs received two green return receipts from Defendant, indicating that Defendant received Plaintiffs' notice letter. (*see* Exhibit "2"). Plaintiffs obtained an e-filing confirmation from the LWDA confirming receipt of the notice (*see* Exhibit "3"). On June 12, 2024, Plaintiffs submitted an amended letter to the LWDA, correcting Plaintiff CRECENCIA CAMARILLO's name. (*see* Exhibit "4").

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

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

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

2. For compensatory damages in the amount of Plaintiffs' hourly wage for each meal period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For compensatory damages in the amount of Plaintiffs' unreimbursed out of pocket expenses as a requirement of employment;

4. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)

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

in the amount of fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per Plaintiff for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000);

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

6. An award of prejudgment and post judgment interest;

7. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiffs with proper wages and/or overtime, meal periods, rest periods, unreimbursed expenses, accurate itemized wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802, and IWC 14-2001;

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

9. For penalties under Labor Code §2699, *et seq*. for Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802; Wage Order 14-2001

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

11. An award of attorneys' fees; and

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

DEMAND FOR JURY TRIAL

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

DATED: February 27, 2025

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: ______________________

Eric B. Kingsley
Attorneys for Plaintiffs

EXHIBIT "1"

KINGSLEY & KINGSLEY
| LAWYERS |

September 27, 2023

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

Old Time Farming, Inc.
1141 Tama Lane
Santa Maria, CA 93455
Via Certified Mailing #7015 0640 0003 6593 1783

Old Time Farming, Inc.
C/O Agent for Service of Process
Vincent T. Martinez
215 N. Lincoln Street
Santa Maria, CA 93458
Via Certified Mailing #7015 0640 0003 6593 1790

Re: Alvino Navarro Zeferino; Gerrardo Zeferino; Alvina Crescencia v. Old Time Farming, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Alvino Navarro Zeferino, Gerrardo Zeferino, and Alvina Crescencia (collectively, "Plaintiffs") and a proposed group of current and former employees working for Old Time Farming, Inc. ("Defendant") in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiffs and all of Defendant's aggrieved employees.

Plaintiffs wish to bring a representative action on behalf of themselves and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by Old Time Farming, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the 'Emergency Rules Related to COVID-19. ("aggrieved employees").

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the "Emergency Rules Related to COVID-19," Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days

16133 Ventura Boulevard, Suite 1200, Encino, California 91436
Tel. (818) 990-8300 | Fax. (818) 990-2903

for civil actions are tolled from April 6, 2020 until October 1, 2020 ["Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020."] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Plaintiffs and the aggrieved employees worked for Defendant in or near Northern Santa Barbara County, California as seasonal agricultural workers. Plaintiffs and the aggrieved employees worked in the cultivation and harvest of strawberries, and doing other agricultural work, on land owned, leased, managed, and/or operated, harvested, or otherwise made productive by Defendant. Plaintiffs and the aggrieved employees were paid on a piece rate for work picking strawberries.

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

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

With regard to pre-shift work, Plaintiffs and all aggrieved employees are required to report to work prior to their scheduled shift and perform work. Specifically, Plaintiffs and the aggrieved employees spend time collecting boxes and materials, among other tasks, while "off the clock". These activities and time are compensable, but Defendant fail to pay Plaintiffs and all aggrieved employees for this time worked.

In the middle of their shifts, Defendant required Plaintiffs and the aggrieved employees to travel between blocks or fields once they are done picking at one field. Plaintiffs and the aggrieved employees use their own vehicles to travel between fields approximately three (3) to four (4) times per shift. When using their own vehicles to travel between blocks or fields, Plaintiffs and the aggrieved employees spend about fifteen (15) minutes traveling between blocks or fields. When walking to travel between blocks or fields, Plaintiffs and the aggrieved employees spend about 10-15 minutes traveling between blocks or fields. Plaintiffs and the aggrieved employees are not compensated for this travel time, nor are they reimbursed for their use of their personal vehicles when used to perform required work.

With regard to post-shift work, at the end of each working shift Plaintiffs and the aggrieved employees are required to wait several minutes in line to report their boxes for the day or finish picking fruit for the day. Specifically, Plaintiffs and the aggrieved employees are required to wait approximately at least five (5) minutes to ten (10) minutes or as long as thirty (30) minutes to forty (40) minutes after their scheduled shift has ended turning in their boxes of picked fruit for the workday. Further, while some workers are waiting in line to turn in their boxes, other workers are still picking strawberries. Plaintiffs and the aggrieved employees are clocked out of their scheduled shift at the time that the first worker turns in their box at the end of the working day despite the fact that Plaintiffs and the aggrieved employees still need to wait in line to turn in their boxes and/or are still picking strawberries to complete their boxes. This time spent picking fruit and/or waiting in line to turn in boxes was performed after being "clocked out" and as such, Plaintiffs and the aggrieved employees are not compensated for this time worked even though this time is compensable.

Additionally, Labor Code § 510(a) overtime hours must be compensated at: (a) One and one-half (1.5) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (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.

Plaintiffs and the aggrieved employees work Monday through Saturday. At times, Plaintiffs and the aggrieved employees work on Sundays when there are a lot of strawberries to pick. Plaintiffs and the aggrieved employees are not compensated for overtime nor the extra hours that they work on Sunday. Defendant fails to pay at the overtime rate for the first eight (8) hours that Plaintiffs and the aggrieved employees work on the seventh (7th) day. As such Plaintiffs and the aggrieved employees were paid less than their proper compensation.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of a least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hour of the shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was no provided, was not provided in full, or was not provided in a timely manner

Defendant failed to apprise Plaintiffs and the aggrieved employees of their rights associated with meal periods and failed to provide timely meal periods. Defendant has had a consistent policy of: (1) failing to provide Plaintiffs and the aggrieved employees timely meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the complaint meal period was not provided.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC,* the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendant has had a consistent policy of failing to pay meal period premiums in compliance with California law.

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. During the relevant period, Plaintiffs and the aggrieved employees are entitled to reimbursement of all business-related expenses they incurred throughout the duration of their employment. Specifically, Defendant has failed to reimburse Plaintiffs and aggrieved employees the cost of using their personal tools/equipment and vehicles for business related purposes. Plaintiffs and the aggrieved employees are required to purchase one (1) cart for strawberries per season, which cost approximately $30. Plaintiffs and the aggrieved employees also spend approximately $20 to replace a cart's tire. Prior to 2021, Plaintiffs and the aggrieved employees also purchased boxes of gloves to pick fruit, which cost approximately $18. Starting in 2021, Defendant finally provided a pair of gloves per day to Plaintiffs and the aggrieved employees. However, these gloves are poor quality and did not allow the employees to perform their work adequately. Plaintiffs and the aggrieved employees also purchased their own rain boots and jar rings to perform their job duties. Defendant fails to reimburse Plaintiffs and all aggrieved employees for the costs associated with purchasing and using these carts, tires, gloves, rain boots, and jar rings. Additionally, as discussed above, Defendant required Plaintiffs and the aggrieved employees to use their own vehicles to travel between fields in the middle of their shifts. Plaintiffs and the aggrieved employees were not reimbursed for their vehicle use, such as gas, for travel between Defendant's fields or blocks during the course of a work shift. By failing to provide Plaintiffs and all aggrieved employees with the necessary tools/equipment and transportation reimbursement, Defendant has burdened Plaintiffs and the aggrieved employees with the cost of tools/equipment and using their own vehicles to perform required work.

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

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

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

Labor Code § 203(a) provides: If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. The aggrieved employees, including Plaintiffs, no longer work for Defendant. Furthermore, Defendant's work is seasonal. This means that Plaintiffs and all aggrieved employees did not receive all wages owed when they were discharged, laid off, or quit each season. As such, Defendant has failed to pay Plaintiffs and the aggrieved employees all wages owed to them at the time they quit or are laid off or discharged, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

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

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: ________________________________
Liane Katzenstein Ly

LKL/km

Cc: 1. Martinez Aguilasocho Law, Inc., P.O. Box 1998, Bakersfield, CA93303

EXHIBIT "2"

SENDER: *COMPLETE THIS SECTION*

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

1. Article Addressed to:

Old Time Farming, Inc.
1141 Tama Lane
Santa Maria, CA 93455

9590 9402 7136 1251 6493 84

2. Article Number *(Transfer from service label)*

7015 0640 0003 6593 1783

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)* SR 23249

C. Date of Delivery 9-29-23

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

SANTA MARIA, CA 93454
SEP 29 2023
USPS

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

USPS TRACKING #

9590 9402 7136 1251 6493 84

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

United States
Postal Service

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

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
OLD TIME FARMING, INC.

SENDER: *COMPLETE THIS SECTION*

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

1. Article Addressed to:

Old Time Farming, Inc.
C/O Agent for Service of Process
Vincent T. Martinez
215 N. Lincoln Street
Santa Maria, CA 93458

9590 9402 7136 1251 6493 91

2. Article Number *(Transfer from service label)*

7015 0640 0003 6593 1790

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

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

SANTA MARIA CA 93454
OCT - 3 2023
USPS

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

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

USPS TRACKING #

9590 9402 7136 1251 6493 91

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

United States
Postal Service

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

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
OLD TIME FARMING, INC.

EXHIBIT "3"

State of California
Labor and Workforce Development Agency / Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *: Liane

Your Last Name *: Ly

Firm Name (if any) *: Kingsley & Kingsley, APC
(Enter "in pro per" if you are representing yourself)

Your Email Address *: kimberly@kingsleykingsley

Your Street Name, Number and Suite/Apt *: 16133 Ventura Blvd., S 1

Your Mobile Phone Number: 8189908300

Your City *: Encino

Your Work Phone Number:

Your State *: California

Your Zip/Postal Code *: 91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *: Alvino Navarro Zeferino

Plaintiff/Aggrieved Employee Occupation *: farm worker

Plaintiff Information

Remove

Plaintiff/Aggrieved Employee Name *: Gerrardo Zeferino

Plaintiff/Aggrieved Employee Occupation *: farm worker

Plaintiff Information

Remove

Plaintiff/Aggrieved Employee Name *: Alvina Crescencia

Plaintiff/Aggrieved Employee Occupation *: farm worker

Add Additional Plaintiffs

Employer Information

Employer Entity Type: Please select...

Employer Name *: Old Time Farming, Inc.
Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *: 1141 Tama Lane

Employer City *: Santa Maria

Employer State *: California

Employer Zip/Postal Code *: 93455

Employer Industry *: Agriculture

Add additional defendants

☑ Add any entity other than an individual
☐ Add an individual/sole proprietor employer

Additional Employer Information (Corporation/General Partnership)

Employer Entity Type
Please select...

Employer Name *
Old Time Farming, Inc.
Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *
215 N. Lincoln Street

Employer City *
Santa Maria

Employer State *
California

Employer Zip/Postal Code *
93458

Employer Industry *
Agriculture

Add Additional Employers

Notice General Information

Estimated Number of Employees Impacted by Violations *
50

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

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

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

Filing Fee

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

IFP

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

Billing information

Billing First Name *
Eric

Billing Last Name *
Kingsley

Billing Email *
kimberly@kingsleykingsley

Billing Phone
8189908300

Billing Street Name, Number and Suite/Apt *
16133 Ventura Blvd., Ste 1200

Billing City *
Encino

Billing State *
California

Billing Zip/Postal Code *
91436

Credit Card Type *
[redacted]

Credit Card Number *
[redacted]

CVV Number *
[redacted]

Credit Card Expiration Month *
[redacted]
mm

Credit Card Expiration Year *
[redacted]
yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *
Choose File LWDA Letter ...rming, Inc..pdf

Other Attachment – (if any) (must be a .pdf)
Choose File No file chosen

Add Another Attachment

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

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

- [x] **I understand that, if I file, I must comply with the redaction rules consistent with this notice.**

Previous Page   Submit

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

Click Here to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Wednesday, September 27, 2023 7:51 AM
To: Kimberly Madrid
Subject: Thank you for submission of your PAGA Case.

External Email!

9/27/2023

LWDA Case No. LWDA-CM-984014-23
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Alvino Navarro Zeferino, Gerrardo Zeferino, Alvina Crescencia
Employer: Old Time Farming, Inc.
Filing Fee : $75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:
https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7Ckimberly%40kingsleykingsley.com%7Cd90b129127174611241f08dbbf6934cc%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638314230817147402%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=STsdpD65qPt64J%2BXEUUE3ifRQNG07WTOZYYyOvjXGos%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Wednesday, September 27, 2023 7:52 AM
To: Kimberly Madrid
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information
Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-984014-23
Order Number: ORD-000253516
Total:$75.00
Card Type: [redacted]
Date: 9/27/2023

Billing Information
Name: Eric Kingsley
Email: kimberly@kingsleykingsley.com
Billing Address:
16133 Ventura Blvd., Ste 1200
Encino, California
91436

EXHIBIT "4"

KINGSLEY
SZAMET & LY
EMPLOYMENT LAWYERS

16133 Ventura Boulevard, Suite 1200,
Encino, California 91436
www.kingsleylawyers.com
(818) 990-8300

June 12, 2024

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: *https://dir.tfaforms.net/310*

Old Time Farming, Inc.
1141 Tama Lane
Santa Maria, CA 93455
Via Certified Mailing # 7022 3330 0002 1335 9902

Old Time Farming, Inc.
C/O Agent for Service of Process
Vincent T. Martinez
215 N. Lincoln Street
Santa Maria, CA 93458
Via Certified Mailing # 7022 3330 0002 1335 9926

Re: Alvino Navarro Zeferino; Gerrardo Zeferino; Crecencia Camarillo v. Old Time Farming, Inc.
Amended LWDA Letter
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Alvino Navarro Zeferino, Gerrardo Zeferino, and Crecencia Camarillo (collectively, "Plaintiffs") and a proposed group of current and former employees working for Old Time Farming, Inc. ("Defendant") in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* This is an amended notice letter which shall serve to incorporate and supplement the September 27, 2023 letter from our office. In that September 27th letter, we incorrectly stated Ms. Camarillo's name as "Alvina Crescencia" instead of "Crecencia Camarillo". In an abundance of caution, we herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiffs and all of Defendant's aggrieved employees.

Plaintiffs wish to bring a representative action on behalf of themselves and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by Old Time Farming, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the 'Emergency Rules Related to COVID-19. ("aggrieved employees").

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

Plaintiffs and the aggrieved employees worked for Defendant in or near Northern Santa Barbara County, California as seasonal agricultural workers. Plaintiffs and the aggrieved employees worked in the cultivation and harvest of strawberries, and doing other agricultural work, on land owned, leased, managed, and/or operated, harvested, or otherwise made productive by Defendant. Plaintiffs and the aggrieved employees were paid on a piece rate for work picking strawberries.

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

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

With regard to pre-shift work, Plaintiffs and all aggrieved employees are required to report to work prior to their scheduled shift and perform work. Specifically, Plaintiffs and the aggrieved employees spend time collecting boxes and materials, among other tasks, while "off the clock". These activities and time are compensable, but Defendant fail to pay Plaintiffs and all aggrieved employees for this time worked.

In the middle of their shifts, Defendant required Plaintiffs and the aggrieved employees to travel between blocks or fields once they are done picking at one field. Plaintiffs and the aggrieved employees use their own vehicles to travel between fields approximately three (3) to four (4) times per shift. When using their own vehicles to travel between blocks or fields, Plaintiffs and the aggrieved employees spend about fifteen (15) minutes traveling between blocks or fields. When walking to travel between blocks or fields, Plaintiffs and the aggrieved employees spend about 10-15 minutes traveling between blocks or fields. Plaintiffs and the aggrieved employees are not compensated for this travel time, nor are they reimbursed for their use of their personal vehicles when used to perform required work.

With regard to post-shift work, at the end of each working shift Plaintiffs and the aggrieved employees are required to wait several minutes in line to report their boxes for the day or finish picking fruit for the day. Specifically, Plaintiffs and the aggrieved employees are required to wait approximately at least five (5) minutes to ten (10) minutes or as long as thirty (30) minutes to forty (40) minutes after their scheduled shift has ended turning in their boxes of picked fruit for the workday. Further, while some workers are waiting in line to turn in their boxes, other workers are still picking strawberries. Plaintiffs and the aggrieved employees are clocked out of their scheduled shift at the time that the first worker turns in their box at the end of the working day despite the fact that Plaintiffs and the aggrieved employees still need to wait in line to turn in their boxes and/or are still picking strawberries to complete their boxes. This time spent picking fruit and/or waiting in line to turn in boxes was performed after being "clocked out" and as such, Plaintiffs and the aggrieved employees are not compensated for this time worked even though this time is compensable.

Additionally, Labor Code § 510(a) overtime hours must be compensated at: (a) One and one-half (1.5) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (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.

Plaintiffs and the aggrieved employees work Monday through Saturday. At times, Plaintiffs and the aggrieved employees work on Sundays when there are a lot of strawberries to pick. Plaintiffs and the aggrieved employees are not compensated for overtime nor the extra hours that they work on Sunday. Defendant fails to pay at the overtime rate for the first eight (8) hours that Plaintiffs and the aggrieved employees work on the seventh (7th) day. As such Plaintiffs and the aggrieved employees were paid less than their proper compensation.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of a least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hour of the shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor

Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was no provided, was not provided in full, or was not provided in a timely manner

Defendant failed to apprise Plaintiffs and the aggrieved employees of their rights associated with meal periods and failed to provide timely meal periods. Defendant has had a consistent policy of: (1) failing to provide Plaintiffs and the aggrieved employees timely meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the complaint meal period was not provided.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendant has had a consistent policy of failing to pay meal period premiums in compliance with California law.

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. During the relevant period, Plaintiffs and the aggrieved employees are entitled to reimbursement of all business-related expenses they incurred throughout the duration of their employment. Specifically, Defendant has failed to reimburse Plaintiffs and aggrieved employees the cost of using their personal tools/equipment and vehicles for business related purposes. Plaintiffs and the aggrieved employees are required to purchase one (1) cart for strawberries per season, which cost approximately $30. Plaintiffs and the aggrieved employees also spend approximately $20 to replace a cart's tire. Prior to 2021, Plaintiffs and the aggrieved employees also purchased boxes of gloves to pick fruit, which cost approximately $18. Starting in 2021, Defendant finally provided a pair of gloves per day to Plaintiffs and the aggrieved employees. However, these gloves are poor quality and did not allow the employees to perform their work adequately. Plaintiffs and the aggrieved employees also purchased their own rain boots and jar rings to perform their job duties. Defendant fails to reimburse Plaintiffs and all aggrieved employees for the costs associated with purchasing and using these carts, tires, gloves, rain boots, and jar rings. Additionally, as discussed above, Defendant required Plaintiffs and the aggrieved employees to use their own vehicles to travel between fields in the middle of their shifts. Plaintiffs and the aggrieved employees were not reimbursed for their vehicle use, such as gas, for travel between Defendant's fields or blocks during the course of a work shift. By failing to provide Plaintiffs and all aggrieved employees with the necessary tools/equipment and transportation reimbursement, Defendant has burdened Plaintiffs and the aggrieved employees with the cost of tools/equipment and using their own vehicles to perform required work.

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

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

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

Labor Code § 203(a) provides: If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. The aggrieved employees, including Plaintiffs, no longer work for Defendant. Furthermore, Defendant's work is seasonal. This means that Plaintiffs and all aggrieved employees did not receive all wages owed when they were discharged, laid off, or quit each season. As such, Defendant has failed to pay Plaintiffs and the aggrieved employees all wages owed to them at the time they quit or are laid off or discharged, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

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

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY SZAMET & LY

By: ______________________________
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LKL/km

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