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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA (NORTH COUNTY)

CARLOS PEREZ ALVINO; MAURILIO
PONCE NICOLAS, as individuals, on behalf
of themselves and others similarly situated

PLAINTIFFS,

v.

EAT SWEET FARMS LLC; and DOES 1
thru 50, inclusive,

DEFENDANTS.

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
3/15/2024 9:07 AM
By: Madelyn Mercer , Deputy

NO SUMMONS FILED

CASE NO. 24CV00180

[Case Assigned for All Purposes to Hon.
Patricia Kelly in SM Dept. 1]

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

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff CARLOS PEREZ ALVINO; MAURILIO PONCE NICOLAS, as individuals, on
2 behalf of themselves, all others similarly situated, and on behalf of the people of the State of
3 California and as “aggrieved employees” under Labor Code Private Attorneys General Act of
4 2004, § 2699, *et seq.* (hereafter “PAGA”), complains of Defendant EAT SWEET FARMS LLC
5 (“Defendant”) and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

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

10 All persons who are employed or have been employed as a non-
11 exempt employee by EAT SWEET FARMS LLC, in the State of
12 California who worked one or more pay periods since four (4) years
prior to the filing of this action to the present. (“Proposed Class”)

13 2. Plaintiffs and the Proposed Class worked for Defendant in or near Santa Barbara
14 County as seasonal agricultural workers. Plaintiffs and the members of the Proposed Class worked
15 in the cultivation and harvest of berries and vegetables, and doing other agricultural work, on land
16 owned, leased, managed, and/or operated, harvested, or otherwise made productive by Defendants.
17 Plaintiffs and the Proposed Class members were paid on an hourly basis and also earn a piece rate
18 for work pruning, canning, and juicing crops.

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

22 a. Plaintiffs and the Proposed Class were not properly compensated for all
23 hours worked because Defendants failed to pay Plaintiffs and the Proposed Class for each and
24 every hour worked. Plaintiffs and the Proposed Class routinely worked “off the clock” and
25 performed compensable activities before, during and after each working shift for which no pay
26 was provided. Regarding pre-shift work, Plaintiffs and the Proposed Class are required to report
27 to work prior to their scheduled shift and perform work that is compensable. Every workday,
28 Plaintiffs and the Proposed Class are instructed by the foreman to arrive at least ten (10) to thirty

1 (30) minutes before the official clock-in hour. Plaintiffs and the Proposed Class are not
2 compensated for this wait time. Additionally, Plaintiffs and the Proposed Class are required to
3 park far away from the field they work in, and are required to walk fifteen (15) to thirty (30)
4 minutes from the parking area to the field, while carrying harvest carts used to harvest and collect
5 the crops. These activities and time are compensable, but Defendant fails to pay Plaintiffs and the
6 Proposed Class for this time worked. In the middle of their shifts, Defendants requires Plaintiffs
7 and the Proposed Class to travel between fields once they are done harvesting at one field.
8 Defendant fails to pay Plaintiffs and the Proposed Class for travel time between field to field, even
9 though this occurs during the middle of their shifts. Plaintiffs and the Proposed Class are required
10 to travel from field to field using their own vehicles. Plaintiffs and the Proposed Class could spend
11 up to thirty (30) minutes traveling between fields. Plaintiffs and the Proposed Class are not
12 compensated for this travel time, nor are they reimbursed for their use of their personal vehicles to
13 perform required work. Regarding post-shift work, at the end of each working shift Plaintiffs and
14 the Proposed Class are instructed by the foreman to finish the “corte” (section) before leaving the
15 row. Plaintiffs and the Proposed Class would work twenty (20) minutes or even longer after the
16 end of their shift in order to finish the section or row they were working on. Additionally, some
17 crews are instructed by the foreman to get out of their rows ten (10) minutes before the official
18 clock-out time. Plaintiffs and the Proposed Class spend time after their scheduled shift putting
19 away tools and other work-related equipment. Also, Plaintiffs and the Proposed Class have to walk
20 back to their cars which were parked fifteen (15) to thirty (30) minutes away while carrying the
21 harvest carts. These activities are performed after being “clocked out” and as such, Plaintiffs and
22 the Proposed Class are not compensated for this time worked even though this time is
23 compensable.

24 b. Plaintiffs and the Proposed Class are not properly compensated for all hours
25 worked because Defendant fails to pay Plaintiffs and the Proposed Class for non-productive time
26 during piece rate shifts. During the rainy season, Plaintiffs and the Proposed Class have to wait to
27 pick crops when the weather conditions cause the rows to be wet. Plaintiffs and the Proposed Class
28 are still on the clock and are told to wait until they are given the signal to continue working. This

1 waiting time lasts from one (1) hour up to two and a half (2 ½) hours every day that it rains. This
2 waiting time is not paid by Defendant, despite Plaintiffs and the Proposed Class being on the clock.
3 Plaintiffs and the Proposed Class are not compensated for this time worked even though this time
4 is compensable.

5 4. For at least four (4) years prior to the filing of this action and continuing to the
6 present, Defendant has failed to reimburse Plaintiffs and the Proposed Class the cost of purchasing
7 specialized tools and vehicle use necessary to perform their job duties. The work performed by
8 Plaintiffs and the Proposed Class necessitated the use of special tools. These tools were either not
9 provided by Defendant, or were provided to Plaintiffs and the Proposed Class in poor quality. As
10 a result, Plaintiffs and the Proposed Class purchased these tools and Defendant never reimbursed
11 them for the cost.

12 a. When employees first begin performing work for Defendant, they are
13 provided jar for picking berries for juice, knives for weeding depending on the crew, plastic
14 garbage bags in case of rain, a pair of scissors, and one box of blue gloves. However, these tools
15 are of poor quality and are required to be washed and returned every day after finishing work.
16 Additionally, Defendant charges Plaintiffs and the Proposed Class for any lost or broken tools.
17 The tools provided by Defendant do not allow Plaintiffs and the Proposed Class to perform their
18 work adequately.

19 b. Plaintiffs and the Proposed Class are required to purchase a variety of
20 specialized tools in order to perform their work adequately. These tools/equipment include: harvest
21 carts, replacement tires for the little car, boots, rain covers, gloves, specialized belts for blueberries
22 and blackberries, protective clothing , specialized rings for picking and harvesting, and scissors
23 for weeding and harvesting crops. Defendant does not provide these tools and fails to reimburse
24 Plaintiffs and the Proposed Class for the costs associated with purchasing and using these
25 tools/equipment.

26 c. Defendant also required Plaintiffs and the Proposed Class to travel between
27 fields to perform work tasks. Because Defendant did not provide buses or other transportation to
28 workers so that they could travel from field to field in the middle of their shifts, Plaintiffs and the

1 Proposed Class used their own vehicles to travel from field to field. Defendant did not reimburse
2 Plaintiffs and the Proposed Class for their vehicle use for travel between Defendant's fields during
3 the course of a work shift, in violation of California law.

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

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

11 7. Plaintiffs, on behalf of themselves and all Proposed Class members brings this
12 action pursuant to Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, 1199, and 2802; Wage
13 Order 14-2001; and California Code of Regulations, Title 8, Section 11140, seeking unpaid
14 wages/overtime, unreimbursed expenses, accurate itemized wage statements, other penalties,
15 injunctive and other equitable relief, and reasonable attorneys' fees and costs.

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

19 9. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
20 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
21 PAGA, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim
22 pursuant to PAGA. Plaintiffs, on behalf of themselves and all aggrieved employees presently or
23 formerly employed by Defendant during the liability period as defined in their PAGA notice letter
24 (*see* Exhibit "1"), brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking
25 penalties for Defendant's violations of Labor §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, 1199,
26 and 2802.

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28 ///

1 **II.**

2 **JURISDICTION AND VENUE**

3 10. This Court has subject matter jurisdiction over all causes of action asserted herein
4 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
5 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
6 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
7 State of California or is subject to adjudication in the courts of the State of California.

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

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

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

21 14. Plaintiffs file this amended complaint adding a claim for penalties pursuant to
22 Labor Code § 2699, *et seq.* as a matter of right, pursuant to Labor Code § 2699.3(a)(2)(C)].

23 **III.**

24 **PARTIES**

25 **A. PLAINTIFF**

26 15. Plaintiffs CARLOS PEREZ ALVINO and MAURILIO PONCE NICOLAS are
27 residents of California.

28 16. Plaintiffs and all Proposed Class members, 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 reimbursed for necessary tools and equipment and using personal vehicles for work related purposes;
- d. Work without Defendant providing accurate itemized wage statements;

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

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

19. 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).)

B. DEFENDANTS

20. Defendant EAT SWEET FARMS LLC is believed to be a California corporation operating within the State of California. Defendant’s corporate address is believed to be 3250 Skyway Dr., Ste 201, Santa Maria, CA 93455. Upon information and belief, Defendant employed Plaintiffs and similarly situated persons on an hourly or piece rate basis within California. Defendant has done and does business throughout the State of California.

21. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believes, and based thereon alleges, that each of the Defendants 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 Defendants designated hereinafter as DOES when such identities become known.

22. Plaintiffs are informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are

1 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
2 employer and/or joint employer of Plaintiffs and the Proposed Class members.

3 23. Furthermore, Defendants acted in all respects as the employers or joint employers
4 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
5 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
6 engaged, thereby creating a common law employment relationship, with the Proposed Class.
7 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

8 **IV.**

9 **FACTUAL BACKGROUND**

10 24. Plaintiffs and the Proposed Class are, and at all relevant times have been non-
11 exempt employees within the meaning of the California Labor Code § 500, *et seq.*, and the rules
12 and regulations of California Industrial Welfare Commission (“IWC”) Wage Order 14-2001 [8
13 Cal. Code of Regs. § 11140] (“IWC Wage Order 14”), working in the cultivation and harvest of
14 crops on land owned, leased, managed and/or operated, harvested or otherwise made productive
15 by Defendants in or near Santa Barbara County, California. For a period of time, Plaintiffs and the
16 Proposed Class members were paid on an hourly and/or piece rate basis.

17 25. Plaintiffs and the Proposed Class are, and at all times pertinent hereto, have been
18 classified as non-exempt employees by Defendant. Defendant hires employees who work as
19 hourly employees who are paid on an hourly basis. Plaintiffs and the Proposed Class are also
20 seasonal agricultural workers that are paid on a piece rate basis for work harvesting, canning, and
21 juicing berries and vegetables.

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

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

28 a. Plaintiffs and the Proposed Class were not properly compensated for all

1 hours worked because Defendants failed to pay Plaintiffs and the Proposed Class for each and
2 every hour worked. Plaintiffs and the Proposed Class routinely worked “off the clock” and
3 performed compensable activities before, during and after each working shift for which no pay
4 was provided. Regarding pre-shift work, Plaintiffs and the Proposed Class are required to report
5 to work prior to their scheduled shift and perform work that is compensable. Every workday,
6 Plaintiffs and the Proposed Class are instructed by the foreman to arrive at least ten (10) to thirty
7 (30) minutes before the official clock-in hour. Plaintiffs and the Proposed Class are not
8 compensated for this wait time. Additionally, Plaintiffs and the Proposed Class are required to
9 park far away from the field they work in, and are required to walk fifteen (15) to thirty (30)
10 minutes from the parking area to the field, while carrying the harvest carts. These activities and
11 time are compensable, but Defendant fails to pay Plaintiffs and the Proposed Class for this time
12 worked. In the middle of their shifts, Defendants requires Plaintiffs and the Proposed Class to
13 travel between fields once they are done harvesting at one field. Defendant fails to pay Plaintiffs
14 and the Proposed Class for travel time between field to field, even though this occurs during the
15 middle of their shifts. Plaintiffs and the Proposed Class are required to travel from field to field
16 using their own vehicles. Plaintiffs and the Proposed Class could spend up to thirty (30) minutes
17 traveling between fields. Plaintiffs and the Proposed Class are not compensated for this travel time,
18 nor are they reimbursed for their use of their personal vehicles to perform required work.
19 Regarding post-shift work, at the end of each working shift Plaintiffs and the Proposed Class are
20 instructed by the foreman to finish the “corte” (section) before leaving the row. Plaintiffs and the
21 Proposed Class would work twenty (20) minutes or even longer after the end of their shift in order
22 to finish the section or row they were working on. Additionally, some crews are instructed by the
23 foreman to get out of their rows ten (10) minutes before the official clock-out time. Plaintiffs and
24 the Proposed Class spend time after their scheduled shift putting away tools and other work-related
25 equipment. Also, Plaintiffs and the Proposed Class have to walk back to their cars which were
26 parked fifteen (15) to thirty (30) minutes away while carrying the harvest carts. These activities
27 are performed after being “clocked out” and as such, Plaintiffs and the Proposed Class are not
28 compensated for this time worked even though this time is compensable.

b. Plaintiffs and the Proposed Class are not properly compensated for all hours worked because Defendant fails to pay Plaintiffs and the Proposed Class for non-productive time during piece rate shifts. During the rainy season, Plaintiffs and the Proposed Class have to wait to pick crops when the weather conditions cause the rows to be wet. Plaintiffs and the Proposed Class are still on the clock and are told to wait until they are given the signal to continue working. This waiting time lasts from one (1) hour up to two and a half (2 ½) hours every day that it rains. This waiting time is not paid by Defendant, despite Plaintiffs and the Proposed Class being on the clock. Plaintiffs and the Proposed Class are not compensated for this time worked even though this time is compensable.

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

29. Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 14-2001(7) and Labor Code § 226(a) by failing to issue accurate itemized wage statements reporting total hours worked by Plaintiffs and the Proposed Class and the appropriate rate of pay.

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

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

V.

CLASS ACTION ALLEGATIONS

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

All persons who are employed or have been employed as a non-exempt employee by EAT SWEET FARMS LLC, in the State of California who worked one or more pay periods since four (4) years prior to the filing of this action to the present. (“Proposed Class”)

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

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

7 **A. NUMEROSITY**

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

13 36. Plaintiffs allege that Defendant's employment records would provide information
14 as to the number and location of all Proposed Class members. Joinder of all members of the
15 Proposed Class is not practicable.

16 **B. COMMONALITY**

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

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

22 b. Whether Defendants violated Labor Code § 2802 and/or Wage Order 14-
23 2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the
24 cost of tools;

25 c. Whether Defendants violated Labor Code § 226(a) and Wage Order 14-
26 2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11140 by failing
27 to issue accurate itemized wage statements that accurately report the total hours worked and the
28 applicable rates, for Plaintiffs and the Proposed Class;

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

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

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

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

10 **C. TYPICALITY**

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

15 **D. ADEQUACY OF REPRESENTATION**

16 39. Plaintiffs will fairly and adequately represent and protect the interests of the
17 members of the proposed Class.

18 40. Counsel who represent Plaintiffs and the Proposed Class are competent and
19 experienced in litigating large employment class actions.

20 **E. SUPERIORITY OF CLASS ACTION**

21 41. A class action is superior to other available means for the fair and efficient
22 adjudication of this controversy. Individual joinder of all Proposed Class members is not
23 practicable, and questions of law and fact common to the Proposed Class predominate over any
24 questions affecting only individual members of the Proposed Class. Each member of the Proposed
25 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
26 practice of failing to pay all wages due, failing to reimburse expenses, failing to provide accurate
27 itemized wage statements, and failing to pay all wages upon resignation or termination.

28 42. Class action treatment will allow those similarly situated persons to litigate their

1 claims in the manner that is most efficient and economical for the parties and the judicial system.
2 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of
3 this action that would preclude its maintenance as a class action.

4 **VI.**

5 **FIRST CAUSE OF ACTION**

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

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

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

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

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

15 45. Here, Defendants have had a consistent policy of failing to pay wages and/or
16 overtime to Plaintiffs and the Proposed Class members. Plaintiffs and the Proposed Class members
17 were not properly compensated for all hours worked over eight (8) hours in one day or forty (40)
18 hours in one week. Plaintiffs and the Proposed Class members were not properly compensated for
19 all hours worked, because Defendant failed to pay Plaintiffs and the Proposed Class for each and
20 every hour worked. Plaintiffs and the Proposed Class members routinely worked “off the clock”
21 and performed compensable activities before, during, and after each working shift for which no
22 pay was provided as detailed below. Specifically, Plaintiffs and the Proposed Class were not paid
23 at the proper overtime rate when they were working more than eight (8) hours in one day or forty
24 (40) hours in one week.

25 46. Regarding pre-shift work, Plaintiffs and the Proposed Class are required to report
26 to work prior to their scheduled shift and perform work that is compensable. Every workday,
27 Plaintiffs and the Proposed Class are instructed by the foreman to arrive at least ten (10) to thirty
28 (30) minutes before the official clock-in hour. Plaintiffs and the Proposed Class are not

1 compensated for this wait time. Additionally, Plaintiffs and the Proposed Class are required to
2 park far away from the field they work in, and are required to walk fifteen (15) to thirty (30)
3 minutes from the parking area to the field, while carrying the harvest carts. Plaintiffs and the
4 Proposed Class are not compensated for this time spent traveling to the field from their car, as well
5 as the time spent preparing their boxes and harvest carts for crop picking. These activities and time
6 are compensable, but Defendant fails to pay Plaintiffs and the Proposed Class for this time worked.

7 47. In the middle of their shifts, Defendants requires Plaintiffs and the Proposed Class
8 to travel between fields once they are done harvesting at one field. Defendant fails to pay Plaintiffs
9 and the Proposed Class for travel time between field to field. Plaintiffs and the Proposed Class are
10 not compensated for the time taken to travel between fields, even though this occurs during the
11 middle of their shifts. Plaintiffs and the Proposed Class are required to travel from field to field
12 using their own vehicles. Plaintiffs and the Proposed Class could spend up to thirty (30) minutes
13 traveling between fields. Plaintiffs and the Proposed Class are not compensated for this travel time,
14 nor are they reimbursed for their use of their personal vehicles to perform required work.

15 48. Regarding post-shift work, at the end of each working shift Plaintiffs and the
16 Proposed Class are instructed by the foreman to finish the “corte” (section) before leaving the row.
17 Plaintiffs and the Proposed Class would work twenty (20) minutes or even longer after the end of
18 their shift in order to finish the section or row they were working on. This time spent finishing
19 their section or row was performed after being “clocked out” and as such, Plaintiffs and the
20 Proposed Class are not compensated for this time worked even though this time is compensable.
21 Additionally, some crews are instructed by the foreman to get out of their rows ten (10) minutes
22 before the official clock-out time. Plaintiffs and the Proposed Class spend time after their
23 scheduled shift putting away tools and other work-related equipment. Also, Plaintiffs and the
24 Proposed Class have to walk back to their cars which were parked fifteen (15) to thirty (30) minutes
25 away while carrying the harvest carts. This time spent putting away equipment and carrying their
26 harvesting boxes back to their cars is performed after being “clocked out” and as such, Plaintiffs
27 and the Proposed Class are not compensated for this time worked even though this time is
28 compensable.

1 49. Plaintiffs and the Proposed Class are not properly compensated for all hours worked
2 because Defendant fails to pay Plaintiffs and the Proposed Class for non-productive time during
3 piece rate shifts. During the rainy season, Plaintiffs and the Proposed Class have to wait to pick
4 crops when the weather conditions cause the rows to be wet. Plaintiffs and the Proposed Class are
5 still on the clock and are told to wait until they are given the signal to continue working. This
6 waiting time lasts from one (1) hour up to two and a half (2 ½) hours every day that it rains. This
7 waiting time is not paid by Defendant, despite Plaintiffs and the Proposed Class being on the clock.
8 Plaintiffs and the Proposed Class are not compensated for this time worked even though this time
9 is compensable.

10 50. Defendant failed to record waiting time, include work performed off-the-clock, and
11 failed to compensate Plaintiffs and the Proposed Class for all hours worked.

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

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

20 **VII.**

21 **SECOND CAUSE OF ACTION**

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

23 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

24 **LABOR CODE § 2802**

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

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

1 55. Plaintiffs and the Proposed Class are entitled to reimbursement of all business-
2 related expenses they incurred throughout the duration of their employment. Specifically,
3 Defendants have failed to reimburse Plaintiffs and the Proposed Class the cost of using their
4 personal tools and vehicles for business related purposes.

5 56. When employees first begin performing work for Defendant, they are provided jar
6 for picking berries for juice, knives for weeding depending on the crew, plastic garbage bags in
7 case of rain, a pair of scissors, and one box of blue gloves. However, these tools are of poor quality
8 and are required to be washed and returned every day after finishing work. Additionally, Defendant
9 charges Plaintiffs and the Proposed Class for any lost or broken tools. The tools provided by
10 Defendant do not allow Plaintiffs and the Proposed Class to perform their work adequately.

11 57. Defendant also requires Plaintiffs and the Proposed Class to purchase a variety of
12 tools in order to perform their work adequately. These tools/equipment included: (1) the harvest
13 carts, which were a \$55.00 annual charge, with \$25.00 for replacement tires that would be replaced
14 twice a year; (2) boots, \$65.00 for one pair a season; (3) Rain covers or “chaparreras” costing
15 \$25.00 for one season; (4) blue gloves for crop harvesting, costing \$25.00 for a box of 100 gloves;
16 (5) a specialized belt for blueberries which cost \$7.00 annually; (6) a specialized belt for
17 blackberries which cost \$30.00 annually; (7) a hat for sun/weather protection, usually \$20.00; (8)
18 rings or “anillos”, specialized for cannery picking that cost \$20.00 per season; (9) a long-sleeve
19 shirt or “manga” that provided sun/weather protection, which would cost \$15.00 a season; and (10)
20 a pair of specialized scissors for weeding and harvesting crops, which would cost \$45.00 per
21 season. Defendants fail to reimburse Plaintiffs and the Proposed Class for the costs associated with
22 purchasing and using these tools/equipment.

23 58. Additionally, as discussed above, Defendants required Plaintiffs and the Proposed
24 Class to use their own vehicles to travel between fields in the middle of their shifts. Defendant
25 required Plaintiffs and the Proposed Class members to travel between job sites to perform work
26 tasks. Because Defendant did not provide buses or other transportation to workers so that they
27 could travel from job sites to job sites in the middle of their shifts, Plaintiffs and the Proposed
28 Class used their own vehicles to travel from job site to job site. Defendant did not reimburse

1 Plaintiffs and the Proposed Class for their vehicle use for travel between Defendant's job sites
2 during the course of a work shift, in violation of California law.

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

6 **VIII.**

7 **THIRD CAUSE OF ACTION**

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

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

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

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

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

18 63. IWC Wage Orders 14-2001(7), 14-2000(7), 14-1998(7) require defendants to
19 maintain time records showing, among others, when the employee begins and ends each work
20 period, meal periods, split shift intervals and total daily hours worked in an itemized wage
21 statements, and must show all deductions from payment of wages, the number of piece-rate units
22 earned and any applicable piece rate if the employee is paid on a piece-rate, and accurately report
23 total hours worked by Plaintiffs and the members of the proposed Class. Defendant failed to keep
24 accurate records of the total daily hours worked.

25 64. Labor Code § 226(a)(2) requires that every employer shall semimonthly or at the
26 time of each payment of wages, furnish each of his or her employees, an accurate itemized
27 statement in writing showing the total hours worked by the employee. Plaintiffs and the Proposed
28 Class are issued wage statements that do not include the total hours worked by the employee.

65. Labor Code § 226(a)(9) 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. Plaintiffs and the Class 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.

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

67. 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.

FOURTH CAUSE OF ACTION

PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS

WAITING TIME PENALTIES UNDER LABOR CODE § 203

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

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

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

71. Defendant has failed to pay Plaintiffs and others a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those

1 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiffs and
2 the Proposed Class are entitled to a penalty in the amount of Plaintiffs’ and the Proposed Class
3 Members’ daily wage multiplied by thirty (30) days.

4 **X.**

5 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

28 77. Defendant has violated statutes and public policies as alleged herein. Through the

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

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

8 79. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
9 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
10 § 17200, *et seq.* of the Business & Professions Code.

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

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

20 **XI.**

21 **SIXTH CAUSE OF ACTION**

22 **PLAINTIFFS ON BEHALF OF THEMSELVES AND ALL AGGRIEVED EMPLOYEES**

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

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

26 83. As a result of the acts alleged above and specifically incorporated herein, Plaintiffs
27 seeks penalties under Labor Code § 2699, *et seq.* use of Defendant's violation of Labor Code §§
28 201, 202, 203, 226(a), 510, 1194, 1194.2, 1199, and 2802; IWC Wage Order 14-2001; and

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

84. 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.

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

86. Pursuant to Labor Code § 2699.3(a)(1), Plaintiffs uploaded a notice letter to the LWDA¹ and mailed a letter by certified mail to Defendant's entity addresses as listed on the Secretary of State website², which is 3250 Skyway Dr., Ste 201, Santa Maria, CA 93455, as proscribed by the Code on November 16, 2023, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, 1199, 2802, and IWC Wage Order 14, (*see* Exhibit "1.") Plaintiffs also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (*see* Exhibit "2").

87. 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).

88. Plaintiffs will also provide the LWDA with a filed-stamped copy of the First Amended Class and Representative Action Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

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

¹ 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>).

² <https://bizfileonline.sos.ca.gov/search/business>.

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

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

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

5. An award of prejudgment and post judgment interest;

6. 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, unreimbursed expenses, accurate itemized wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, 1199, 2802, and IWC 14-2001;

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

8. For penalties under Labor Code § 2699, *et seq.* for Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, 1199, and 2802;

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

10. An award of attorneys' fees; and

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

DEMAND FOR JURY TRIAL

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

DATED: March 15, 2024

KINGSLEY & KINGSLEY, APC

By: _____

Liane Katzenstein Ly

Attorneys for Plaintiffs and the Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

January 9, 2024

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

Eat Sweet Farms LLC
3250 Skyway Dr., Ste 201
Santa Maria, CA 93455
Via Certified Mailing #: 7022 3330 0002 1335 9025

Re: Carlos Perez Alvino; Maurilio Ponce Nicolas v. Eat Sweet Farms LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Carlos Perez Alvino; Maurilio Ponce Nicolas (“Plaintiffs”) and a proposed group of current and former employees working for Eat Sweet Farms LLC (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to 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 persons who are employed or have been employed as a non-exempt employee by Eat Sweet Farms LLC, 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. (“aggrieved employees”).

Plaintiffs and the aggrieved employees are paid on an hourly basis and also earn a piece rate by picking, canning, and juicing berries (strawberries, blueberries, blackberries) and vegetables (celery, broccoli).

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

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

January 9, 2024

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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 are 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 are not properly compensated for all hours worked, because Defendants fails to pay Plaintiffs and the aggrieved employees for each and every hour worked. Plaintiffs and the aggrieved employees routinely work “off the clock” and perform compensable activities before, during, and after each working shift for which no pay is provided as detailed below.

Regarding pre-shift work, Plaintiffs and the aggrieved employees are required to report to work prior to their scheduled shift and perform work that is compensable. Every workday, Plaintiffs and the aggrieved employees are instructed by the foreman to arrive at least ten (10) to thirty (30) minutes before the official clock-in hour. Plaintiffs and the aggrieved employees are not compensated for this wait time. Additionally, Plaintiffs and the aggrieved employees are required to park far away from the field they work in and are required to walk fifteen (15) to thirty (30) minutes from the parking area to the field, while carrying harvest carts used to harvest and collect the crops. Plaintiffs and the aggrieved employees are not compensated for this time spent traveling to the field from their car, as well as the time spent preparing their boxes and harvest carts for crop picking. These activities and time are compensable, but Defendant fails to pay Plaintiffs and the aggrieved employees for this time worked.

In the middle of their shifts, Defendants requires Plaintiffs and the aggrieved employees to travel between fields once they are done harvesting at one field. Defendant fails to pay Plaintiffs and the aggrieved employees for travel time between field to field. Plaintiffs and the aggrieved employees are not compensated for the time taken to travel between fields, even though this occurs during the middle of their shifts. Plaintiffs and the aggrieved employees are required to travel from field to field using their own vehicles. Plaintiffs and the aggrieved employees could spend up to thirty (30) minutes traveling between fields. Plaintiffs and the aggrieved employees are not compensated for this travel time, nor are they reimbursed for their use of their personal vehicles to perform required work.

Regarding post-shift work, at the end of each working shift Plaintiffs and the aggrieved employees are instructed by the foreman to finish the “corte” (section) before leaving the row. Plaintiffs and the aggrieved employees would work twenty (20) minutes or even longer after the end of their shift in order to finish the section or row they were working on. This time spent finishing their section or row 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, some crews are instructed by the foreman to get out of their rows ten (10) minutes before the official clock-out time. Plaintiffs and the aggrieved employees spend time after their scheduled shift putting away tools and other work-related equipment. Also, Plaintiffs and the aggrieved employees have to walk back to their cars which were parked fifteen (15) to thirty (30) minutes away while carrying their harvest carts. This time spent putting away equipment and

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carrying their harvesting carts back to their cars is 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.

Plaintiffs and all aggrieved employees are not properly compensated for all hours worked because Defendant fails to pay Plaintiffs and the aggrieved employees for non-productive time during piece rate shifts. During the rainy season, Plaintiffs and the aggrieved employees have to wait to pick crops when the weather conditions cause the rows to be wet. Plaintiffs and the aggrieved employees are still on the clock and are told to wait until they are given the signal to continue working. This waiting time lasts from one (1) hour up to two and a half (2 ½) hours every day that it rains. This waiting time is not paid by Defendant, despite Plaintiffs and the aggrieved employees being on the clock. Plaintiffs and the aggrieved employees are not compensated for this time worked even though this time is compensable.

Defendant failed to record waiting time, include work performed off-the-clock, and failed to compensate Plaintiffs and the aggrieved employees for all hours worked.

In addition, Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiffs and aggrieved employees the cost of using their personal tools for business related purposes. When employees first begin performing work for Defendant, they are provided jars for picking berries for juice, knives for weeding depending on the crew, plastic garbage bags in case of rain, a pair of scissors, and one box of blue gloves. However, these tools are of poor quality and are required to be washed and returned every day after finishing work. Additionally, Defendant charges Plaintiffs and the aggrieved employees for any lost or broken tools. The tools provided by Defendant do not allow Plaintiffs and the aggrieved employees to perform their work adequately.

Defendant also requires Plaintiffs and the aggrieved employees to purchase a variety of tools in order to perform their work adequately. These tools/equipment included: (1) the harvest carts, which were a \$55.00 annual charge, with \$25.00 for replacement tires that would be replaced twice a year; (2) boots, \$65.00 for one pair a season; (3) Rain covers or “chaparreras” costing \$25.00 for one season; (4) blue gloves for crop harvesting, costing \$25.00 for a box of 100 gloves; (5) a specialized belt for blueberries which cost \$7.00 annually; (6) a specialized belt for blackberries which cost \$30.00 annually; (7) a hat for sun/weather protection, usually \$20.00; (8) rings or “anillos”, specialized for cannery picking that cost \$20.00 per season; (9) a long-sleeve shirt or “manga” that provided sun/weather protection, which would cost \$15.00 a season; and (10) a pair of specialized scissors for weeding and harvesting crops, which would cost \$45.00 per season. Defendants fail to reimburse Plaintiffs and the aggrieved employees for the costs associated with purchasing and using these tools/equipment.

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

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

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

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

Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant's employ. Plaintiffs and the aggrieved employees were seasonal employees, and Defendant failed to pay all wages due upon their separation each season. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

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.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

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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), 510, 1194, 1194.2, 1199, and 2802, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly

[LKL/tg]

Cc: 1. MARTINEZ AGUILASOCHO LAW, INC., P.O. Box 1998, , Bakersfield, CA 93303

EXHIBIT "2"



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 *

Katzenstein Ly

Firm Name (if any) *

Kingsley & Kingsley, APC

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

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard

Your Mobile Phone Number

(818) 990-8300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436



Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Carlos Perez Alvino

Plaintiff/Aggrieved Employee Occupation *

Farm Worker

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Maurilio Ponce Nicolas

Plaintiff/Aggrieved Employee Occupation *

Farm Worker

[Remove](#)[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

Eat Sweet Farms LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

3250 Skyway Dr., Ste 201

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

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

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

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

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

Filing Fee

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

IFP

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

Billing information**Billing First Name ***

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

(818) 990-8300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Boulevard Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type * ▼**Credit Card Number *** ...**CVV Number *****Credit Card Expiration Month ***

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments**PAGA Claim Notice (must be a .pdf) *** PAGA Letter – Eat Sweet.pdf**Other Attachment – (if any) (must be a .pdf)** 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.

☒ **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

Thank you for submission of your PAGA Case.

noreply@salesforce.com <noreply@salesforce.com>

on behalf of

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Tue 1/9/2024 3:17 PM

To:Service Email <service@kingsleykingsley.com>

External Email!

1/9/2024

LWDA Case No. LWDA-CM-1003963-24

Law Firm : Kingsley & Kingsley, APC

Plaintiff Name : Carlos Perez Alvino, Maurilio Ponce Nicolas

Employer: Eat Sweet Farms LLC

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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/?](https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate+Attorneys+General+Act.htm&data=05%7C02%7CTaylor%40kingsleykingsley.com%7Cd8e35e106dcf4237b51808dc11692d0e%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638404390635066496%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=hrkLC4K%2F8N%2F4Jw2DBAuAO1D7p%2BG45BH0e9yw%2FVzKfIQ%3D&reserved=0)

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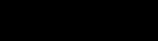
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Case Number: LWDA-CM-1003963-24

Order Number: ORD-000266180

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Billing Information

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