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ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
6/28/2024 9:32 AM
By: Blanca Delabra , Deputy

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

PAULINA SANTIAGO GARCIA;
MAXIMINO VILLANUEVA VASQUEZ;
CATALINA GALVEZ SANTIAGO, as
individuals, on behalf of themselves and
others similarly situated

PLAINTIFFS,

v.

KEM FARMS, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 24CV02308

[Case Assigned for All Purposes to Hon.
Patricia Kelly in 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 Pay Minimum Wage Pursuant
3. to Labor Code § 1194
4. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
5. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
6. Violation of Labor Code § 226(a)
7. Violation of Labor Code §§ 245.5 and 246
8. Penalties Pursuant to Labor Code § 203
9. Violation of Business & Professions Code § 17200
10. Penalties Pursuant to Labor Code §2699, et seq.

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Attorneys for Plaintiffs and the proposed class

1 Plaintiffs PAULINA SANTIAGO GARCIA; MAXIMINO VILLANUEVA VASQUEZ;
2 CATALINA GALVEZ SANTIAGO, as individuals, on behalf of themselves, all others similarly
3 situated, and on behalf of the people of the State of California and as “aggrieved employees” under
4 Labor Code Private Attorneys General Act of 2004, § 2699, *et seq.* (hereafter “PAGA”),
5 complains of Defendant KEM FARMS, INC. (“Defendant”) and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382, 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 KEM Farms, Inc., in the State of California
12 since four (4) years prior to the filing of this action to the present.
13 (“Proposed Class”)

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

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

23 a. Plaintiffs and the Proposed Class were not properly compensated for all
24 hours worked, because Defendant failed to pay Plaintiffs and the Proposed Class for each and
25 every hour worked. Plaintiffs and the Proposed Class routinely worked “off the clock” and
26 performed compensable activities before, during, and after each working shift for which no pay
27 was provided. With regard to pre-shift work, Plaintiffs and the Proposed Class are required to
28 report to work prior to their scheduled shift and perform work, but are routinely told by Defendants
to wait anywhere from approximately 15 to 30 minutes before Plaintiffs and the Proposed Class

1 can begin their scheduled shifts. Plaintiffs and the Proposed Class are required to walk 5 to 10
2 minutes every day walking to the field and prepping material for the day of work, including
3 bringing the necessary tools required. During the rainy season, Plaintiffs and the Proposed Class
4 were required to wait around 30 min to 1 hour at least twice a week before beginning their
5 scheduled shifts. Additionally, employees that worked picking chili peppers were occasionally
6 required to report to work 3 to 3 and a half hours prior to their shift when Defendant required the
7 employees to work out of town. This waiting time and work performed prior to Plaintiffs' and the
8 Proposed Class members' scheduled shift occurs daily and Plaintiffs and the Proposed Class are
9 not compensated for this wait time or work performed. These activities and time are compensable,
10 but Defendants fail to pay Plaintiffs and the Proposed Class for this time worked.

11 b. In the middle of Plaintiffs' and the Proposed Class members' shifts,
12 Defendant required Plaintiffs and the Proposed Class to travel between fields once they are done
13 picking at one field. Plaintiffs and the Proposed Class use their own vehicle(s) to travel to between
14 fields per shift at least twice a week during their lunch breaks. Plaintiffs and the Proposed Class
15 are not compensated for this travel time, nor are they reimbursed for use of their personal vehicle
16 to perform required work. This travel time usually takes 15 to 30 minutes to go from field to field.
17 For employees that were required to work out of town picking chili peppers, they needed to arrive
18 three (3) to three and a half (3 ½) hours early to take the bus at 4:00 a.m. Additionally, these
19 employees that were working out of town would have to take the bus back for (3) hours after their
20 shift ends to get back to Santa Maria, CA. Plaintiffs and the Proposed Class are not compensated
21 for this travel time, and if they were, it was usually only one (1) hour, instead of the five (5) or six
22 (6) hours Plaintiffs and the Proposed Class spent traveling to the out of town field.

23 c. Additionally, when Plaintiffs and the Proposed Class were required to pick
24 blueberries for juicing, Plaintiffs and the Proposed Class would not be paid for the time they were
25 picking blueberries for juicing. Plaintiffs and the Proposed Class were required to produce at least
26 one jar per hour, however Defendant failed to pay Plaintiffs and the Proposed Class on a piece-
27 rate basis for picking blueberries for juicing.

28 d. With regard to post-shift work, at the end of each working shift, Plaintiffs

1 and the Proposed Class are instructed by the foreman to finish the “corte” (section) before leaving
2 the row. Plaintiffs and the Proposed Class would work one (1) to two (2) hours after the end of
3 their shift in order to finish the section or row they were working on. This time spent finishing
4 their section or row was performed after being “clocked out” and as such, Plaintiffs and the
5 Proposed Class are not compensated for this time worked even though this time is compensable.
6 Additionally, Plaintiffs and the Proposed Class are required to do a line drop off of their boxes
7 which takes 10 to 15 minutes every day. Plaintiffs and the Proposed Class also spend time after
8 their scheduled shift putting away tools and other work-related equipment, including boxes and
9 jars used to pick the crops. Plaintiffs and the Proposed Class have to walk back to their cars which
10 were parked fifteen (15) to thirty (30) minutes away while carrying their harvest carts. This time
11 spent putting away equipment and carrying their harvesting carts back to their cars is performed
12 after being “clocked out” and as such, Plaintiffs and the Proposed Class are not compensated for
13 this time worked even though this time is compensable.

14 e. Additionally, Defendant has had a consistent policy of failing to pay wages
15 and/or overtime to Plaintiffs and all Proposed Class at the appropriate rate of pay. Plaintiffs and
16 other Proposed Class were not properly compensated for all hours worked over eight (8) hours in
17 one day or forty (40) hours in one week. Plaintiffs and the Proposed Class were not properly
18 compensated for overtime worked because Defendant failed to pay Plaintiffs and the Proposed
19 Class for all hours worked over 8 hours per day or 40 hours per week. As such, Plaintiffs and the
20 Proposed Class were not paid overtime pay despite working over eight (8) hours in one day or
21 forty (40) hours in one week.

22 4. From at least four (4) years prior to the filing of this action to the present, Defendant
23 has had a consistent policy of failing to pay minimum wages to Plaintiffs and the Proposed Class.
24 Plaintiffs and the Proposed Class were forced to work on a regular and consistent basis without
25 receiving compensation for all hours worked, despite performing compensable activities, and as a
26 result, were paid at a pay rate that fell below the minimum wage rate in violation of California law.

27 5. From at least four (4) years prior to the filing of this action and continuing to the
28 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of

1 their right to take meal periods by way of a lawful policy and failing to provide Plaintiffs and the
2 Proposed Class members compliant meal periods, and failing to pay such employees one (1) hour
3 of pay at the employees' regular rate of compensation for each workday that the meal period is not
4 provided or provided after five (5) hours, as required by California state wage and hour laws.
5 Additionally, Defendants have had a consistent policy of failing to pay meal period premiums in
6 compliance with California law.

7 6. For at least four (4) years prior to the filing of this action and continuing to the
8 present, Defendant has failed to reimburse Plaintiffs and the Proposed Class for their tools and
9 mileage necessary to perform their job duties. The work performed by Plaintiffs and the Proposed
10 Class necessitated the use of special tools. Plaintiffs and the Proposed Class are required to work
11 without being reimbursed for their business expenses. The work performed by Plaintiffs and the
12 Proposed Class necessitated the use of tools such as, but not limited to, scissors, shovels, boxes,
13 harvest carts, buckets, gloves, chaps, baskets, and various other tools. Defendant fails to reimburse
14 Plaintiffs and the Proposed Class for the costs associated with purchasing and using these tools.

15 a. When employees first begin performing work for Defendant, they are
16 provided a pair of scissors for pruning, a shovel, a plastic box for the berries, and a five gallon
17 bucket for harvesting chili peppers. However, these tools are of poor quality and are required to
18 be returned every day after finishing work. Additionally, Defendant charges Plaintiffs and the
19 Proposed Class for any lost or broken tools. The tools provided by Defendant do not allow
20 Plaintiffs and the Proposed Class to perform their work adequately.

21 b. Plaintiffs and the Proposed Class are required to purchase a variety of
22 specialized tools in order to perform their work adequately. These tools/equipment include: harvest
23 carts, replacement tires for the harvest carts, boots, gloves, chaps, specialized scissors, specialized
24 knives, baskets, and bells. Defendant does not provide these tools and fails to reimburse Plaintiffs
25 and the Proposed Class for the costs associated with purchasing and using these tools/equipment.

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

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

4 7. 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 issue accurate itemized wage statements reporting all
7 applicable hourly rates in effect during the pay period, and the corresponding number of hours
8 worked at each hourly rate by the employee.

9 8. For at least four (4) years prior to the filing of this action continuing to the present,
10 Defendant has had a consistent policy of failing to set forth the amount of sick leave available, or
11 paid time off leave it provides in lieu of sick leave, on the itemized wage statements described in
12 Section 226.

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

16 10. Plaintiff, on behalf of themselves and all Proposed Class Members brings this
17 action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 245.5, 246, 510, 512, 1194, 1194.2,
18 , 1199, and 2802; Wage Order 14-2001; and California Code of Regulations, Title 8, Section
19 11040, seeking unpaid wages/overtime, meal period penalties, unreimbursed expenses, accurate
20 itemized wage statements, other penalties, injunctive and other equitable relief, and reasonable
21 attorneys' fees and costs.

22 11. Plaintiff, on behalf of themselves and all Proposed Class Members, pursuant to
23 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
24 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

25 12. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
26 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
27 PAGA, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim
28 pursuant to PAGA. Plaintiffs, on behalf of themselves and all aggrieved employees presently or

1 formerly employed by Defendants during the liability period as defined in their PAGA notice letter
2 (*see* Exhibit “1”), brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking
3 penalties for Defendant’s violations of Labor Code §§ 201, 202, 203, 226(a), 226.7, 245.5, 246,
4 510, 512, 1194, 1194.2, , 1199, and 2802.

5 **II.**

6 **JURISDICTION AND VENUE**

7 13. This Court has subject matter jurisdiction over all causes of action asserted herein
8 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
9 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
10 of interest, exceeds \$35,000, and because each cause of action asserted arises under the laws of the
11 State of California or is subject to adjudication in the courts of the State of California.

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

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

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

25 **III.**

26 **PARTIES**

27 **A. PLAINTIFF**

28 17. Plaintiffs PAULINA SANTIAGO GARCIA; MAXIMINO VILLANUEVA

VASQUEZ; CATALINA GALVEZ SANTIAGO are residents of California.

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

- a. Work without being paid for all hours worked;
- b. Work without being paid for all hours at the appropriate overtime rate;
- c. Work without being provided minimum wages;
- d. Work without being provided complaint meal periods;
- e. Work without being reimbursed for their out of pocket expenses for necessary tools and equipment and using personal vehicles for work related purposes;
- f. Work without Defendants provided accurate itemized wage statements;
- g. Work without Defendant failing to set forth the amount of sick leave available or paid time off on itemized wage statements.

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

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

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

B. DEFENDANTS

22. Defendant KEM FARMS, INC. is believed to be a California corporation operating within the State of California. Defendant's corporate address is believed to be 610 W Boone St., Santa Maria, CA 93458. Upon information and belief, Defendant employed Plaintiffs and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

23. 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

1 to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
2 capacities of the Defendants designated hereinafter as DOES when such identities become known.

3 24. Plaintiffs are informed and believes, and based thereon alleges, that each Defendant
4 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
5 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
6 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
7 employer and/or joint employer of Plaintiffs and the Proposed Class Members.

8 25. Furthermore, Defendants acted in all respects as the employers or joint employers
9 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
10 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
11 engaged, thereby creating a common law employment relationship, with the Proposed Class.
12 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

13 IV.

14 FACTUAL BACKGROUND

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

18 27. Upon information and belief, Plaintiffs and the Proposed Class are covered by
19 California Industrial Welfare Commission Occupational Wage Order No. 14-2001 (Title 8 Cal.
20 Code of Regs. § 11040).

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

24 a. Plaintiffs and the Proposed Class were not properly compensated for all
25 hours worked, because Defendant failed to pay Plaintiffs and the Proposed Class for each and
26 every hour worked. Plaintiffs and the Proposed Class routinely worked “off the clock” and
27 performed compensable activities before, during, and after each working shift for which no pay
28 was provided. With regard to pre-shift work, Plaintiffs and the Proposed Class are required to

1 report to work prior to their scheduled shift and perform work, but are routinely told by Defendants
2 to wait anywhere from approximately 15 to 30 minutes before Plaintiffs and the Proposed Class
3 can begin their scheduled shifts. Plaintiffs and the Proposed Class members are required to walk
4 5 to 10 minutes every day walking to the field and prepping material for the day of work, including
5 bringing the necessary tools required. During the rainy season, Plaintiffs and the Proposed Class
6 were required to wait around 30 min to 1 hour at least twice a week before beginning their
7 scheduled shifts. Additionally, employees that worked picking chili peppers were occasionally
8 required to report to work 3 to 3 and a half hours prior to their shift when Defendant required the
9 employees to work out of town. This waiting time and work performed prior to Plaintiffs' and the
10 Proposed Class members' scheduled shift occurs daily and Plaintiffs and the Proposed Class are
11 not compensated for this wait time or work performed. These activities and time are compensable,
12 but Defendants fail to pay Plaintiffs and the Proposed Class for this time worked.

13 b. In the middle of Plaintiffs' and the Proposed Class members' shifts,
14 Defendant required Plaintiffs and the Proposed Class to travel between fields once they are done
15 picking at one field. Plaintiffs and the Proposed Class use their own vehicle(s) to travel to between
16 fields per shift at least twice a week during their lunch breaks. Plaintiffs and the Proposed Class
17 are not compensated for this travel time, nor are they reimbursed for use of their personal vehicle
18 to perform required work. This travel time usually takes 15 to 30 minutes to go from field to field.
19 For employees that were required to work out of town picking chili peppers, they needed to arrive
20 three (3) to three and a half (3 ½) hours early to take the bus at 4:00 a.m. Additionally, these
21 employees that were working out of town would have to take the bus back for (3) hours after their
22 shift ends to get back to Santa Maria, CA. Plaintiffs and the Proposed Class are not compensated
23 for this travel time, and if they were, it was usually only one (1) hour, instead of the five (5) or six
24 (6) hours Plaintiffs and the Proposed Class spent traveling to the out of town field.

25 c. Additionally, when Plaintiffs and the Proposed Class were required to pick
26 blueberries for juicing, Plaintiffs and the Proposed Class would not be paid for the time they were
27 picking blueberries for juicing. Plaintiffs and the Proposed Class were required to produce at least
28 one jar per hour, however Defendant failed to pay Plaintiffs and the Proposed Class on a piece-

1 rate basis for picking blueberries for juicing.

2 d. With regard to post-shift work, at the end of each working shift, Plaintiffs
3 and the Proposed Class are instructed by the foreman to finish the “corte” (section) before leaving
4 the row. Plaintiffs and the Proposed Class members would work one (1) to two (2) hours after the
5 end of their shift in order to finish the section or row they were working on. This time spent
6 finishing their section or row was performed after being “clocked out” and as such, Plaintiffs and
7 the Proposed Class are not compensated for this time worked even though this time is
8 compensable. Additionally, Plaintiffs and the Proposed Class are required to do a line drop off of
9 their boxes which takes 10 to 15 minutes every day. Plaintiffs and the Proposed Class also spend
10 time after their scheduled shift putting away tools and other work-related equipment, including
11 boxes and jars used to pick the crops. Plaintiffs and the Proposed Class have to walk back to their
12 cars which were parked fifteen (15) to thirty (30) minutes away while carrying their harvest carts.
13 This time spent putting away equipment and carrying their harvesting carts back to their cars is
14 performed after being “clocked out” and as such, Plaintiffs and the Proposed Class are not
15 compensated for this time worked even though this time is compensable.

16 e. Additionally, Defendant has had a consistent policy of failing to pay wages
17 and/or overtime to Plaintiffs and all Proposed Class at the appropriate rate of pay. Plaintiffs and
18 other Proposed Class members were not properly compensated for all hours worked over eight (8)
19 hours in one day or forty (40) hours in one week. Plaintiffs and the Proposed Class were not
20 properly compensated for overtime worked because Defendant failed to pay Plaintiffs and the
21 Proposed Class for all hours worked over 8 hours per day or 40 hours per week. As such, Plaintiffs
22 and the Proposed Class were not paid overtime pay despite working over eight (8) hours in one
23 day or forty (40) hours in one week.

24 29. From at least four (4) years prior to the filing of this action to the present, Defendant
25 has had a consistent policy of failing to pay minimum wages to Plaintiffs and the Proposed Class.
26 Plaintiffs and the Proposed Class were forced to work on a regular and consistent basis without
27 receiving compensation for all hours worked, despite performing compensable activities, and as a
28 result, were paid at a pay rate that fell below the minimum wage rate in violation of California law.

1 30. From at least four (4) years prior to the filing of this action and continuing to the
2 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
3 their right to take meal periods by way of a lawful policy and failing to provide Plaintiffs and the
4 Proposed Class members compliant meal periods, and failing to pay such employees one (1) hour
5 of pay at the employees' regular rate of compensation for each workday that the meal period is not
6 provided or provided after five (5) hours, as required by California state wage and hour laws.
7 Additionally, Defendants have had a consistent policy of failing to pay meal period premiums in
8 compliance with California law.

9 31. For at least four (4) years prior to the filing of this action and continuing to the
10 present, Defendant has failed to reimburse Plaintiffs and the Proposed Class for their tools and
11 mileage necessary to perform their job duties. The work performed by Plaintiffs and the Proposed
12 Class necessitated the use of special tools. Plaintiffs and the Proposed Class are required to work
13 without being reimbursed for their business expenses. The work performed by Plaintiffs and the
14 Proposed Class necessitated the use of tools such as, but not limited to, scissors, shovels, boxes,
15 harvest carts, buckets, gloves, chaps, baskets, and various other tools. Defendant fails to reimburse
16 Plaintiffs and the Proposed Class for the costs associated with purchasing and using these tools.

17 a. When employees first begin performing work for Defendant, they are
18 provided a pair of scissors for pruning, a shovel, a plastic box for the berries, and a five gallon
19 bucket for harvesting chili peppers. However, these tools are of poor quality and are required to
20 be returned every day after finishing work. Additionally, Defendant charges Plaintiffs and the
21 Proposed Class for any lost or broken tools. The tools provided by Defendant do not allow
22 Plaintiffs and the Proposed Class to perform their work adequately.

23 b. Plaintiffs and the Proposed Class are required to purchase a variety of
24 specialized tools in order to perform their work adequately. These tools/equipment include: harvest
25 carts, replacement tires for the harvest carts, boots, gloves, chaps, specialized scissors, specialized
26 knives, baskets, and bells. Defendant does not provide these tools and fails to reimburse Plaintiffs
27 and the Proposed Class for the costs associated with purchasing and using these tools/equipment.

28 c. Defendant also required Plaintiffs and all Proposed Class members to travel

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

6 32. For at least one (1) year prior to the filing of this action continuing to the present,
7 Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order 14-
8 2001 and Labor Code § 226(a) by failing issue accurate itemized wage statements reporting all
9 applicable hourly rates in effect during the pay period, and the corresponding number of hours
10 worked at each hourly rate by the employee.

11 33. For at least four (4) years prior to the filing of this action continuing to the present,
12 Defendant has failed to comply with Labor Code §§ 245.5 and 246 by failing to set forth the
13 amount of sick leave available, or paid time off leave on the itemized wage statements described
14 in Labor Code §226 that it issues to Plaintiffs and all other Proposed Class members.

15 34. Defendant willfully failed to pay wages and compensation, when Plaintiffs and all
16 Proposed Class Members quit or were discharged. This failure was willful, without legal
17 justification, and interfered with Plaintiff's and Class Members' rights.

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

19 **V.**

20 **CLASS ACTION ALLEGATIONS**

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

24 All persons who are employed or have been employed as a non-
25 exempt employee by KEM Farms, Inc., in the State of California
26 since four (4) years prior to the filing of this action to the present.
27 ("Proposed Class")

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

1 limitation to particular issues.

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

5 **A. NUMEROSITY**

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

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

14 **B. COMMONALITY**

15 41. There are questions of law and fact common to the Proposed Class that predominate
16 over any questions affecting only individual Proposed Class Members. These common questions
17 of law and fact include, without limitation:

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

20 b. Whether Defendants failed to pay minimum wages as required;

21 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 14-
22 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiffs and the Proposed Class
23 of their right to take meal periods and by failing to provide compliant meal periods throughout the
24 term of employment and failing to compensate said employees one (1) hours wages in lieu of meal
25 periods;

26 d. Whether Defendants violated Labor Code § 2802 and/or Wage Order 14-
27 2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the
28 cost of tools and using their own vehicles to perform required work;

1 e. Whether Defendants violated Labor Code § 226(a) and Wage Order 14-
2 2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing
3 to provide accurate itemized wage statements that accurately report the total hours worked and the
4 applicable rates, for Plaintiffs and the members of the Proposed Class;

5 f. Whether Defendant violated Labor Code §§ 245.5, 246, Wage Order 14-
6 2001 or other applicable IWC Wage Orders, by failing to set forth the amount of paid sick leave
7 available, or paid time off leave an employer provides in lieu of sick leave, for the use on either
8 the employee's itemized wage statements described in Section 226 or in a separate writing
9 provided on the designated pay date with the employees' payment of wages;

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

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

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

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

19 **C. TYPICALITY**

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

24 **D. ADEQUACY OF REPRESENTATION**

25 43. Plaintiffs will fairly and adequately represent and protect the interests of the
26 members of the proposed Class.

27 44. Counsel who represent Plaintiffs and the Proposed Class are competent and
28 experienced in litigating large employment class actions.

E. SUPERIORITY OF CLASS ACTION

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

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

VI.

FIRST CAUSE OF ACTION

PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS

FAILURE TO PAY WAGES AND/OR OVERTIME UNDER

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

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

48. Labor Code §§ 510, 1194 and 1199 require an employer to compensate its employees at the 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.

49. 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*

1 *rate of pay*. California law also requires that any compensation must be included in the regular rate
2 of pay for the purposes of determining correct overtime rates.

3 50. Here, Defendant has had a consistent policy of failing to pay wages and/or overtime
4 to Plaintiffs and all Proposed Class members. Plaintiffs and other Proposed Class members were
5 not properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours
6 in one week. Plaintiffs and the Proposed Class were not properly compensated for all hours
7 worked, because Defendant failed to pay Plaintiffs and the Proposed Class for each and every hour
8 worked. Plaintiffs and the Proposed Class routinely worked “off the clock” and performed
9 compensable activities before, during, and after each working shift for which no pay was provided.

10 51. With regard to pre-shift work, Plaintiffs and the Proposed Class are required to
11 report to work prior to their scheduled shift and perform work, but are routinely told by Defendants
12 to wait anywhere from approximately 15 to 30 minutes before Plaintiffs and the Proposed Class
13 can begin their scheduled shifts. Plaintiffs and the Proposed Class members are required to walk
14 5 to 10 minutes every day walking to the field and prepping material for the day of work, including
15 bringing the necessary tools required. During the rainy season, Plaintiffs and the Proposed Class
16 were required to wait around 30 min to 1 hour at least twice a week before beginning their
17 scheduled shifts. Additionally, employees that worked picking chili peppers were occasionally
18 required to report to work 3 to 3 and a half hours prior to their shift when Defendant required the
19 employees to work out of town. This waiting time and work performed prior to Plaintiffs’ and the
20 Proposed Class members’ scheduled shift occurs daily and Plaintiffs and the Proposed Class are
21 not compensated for this wait time or work performed. These activities and time are compensable,
22 but Defendants fail to pay Plaintiffs and the Proposed Class for this time worked.

23 52. In the middle of Plaintiffs’ and the Proposed Class members’ shifts, Defendant
24 required Plaintiffs and the Proposed Class to travel between fields once they are done picking at
25 one field. Plaintiffs and the Proposed Class use their own vehicle(s) to travel to between fields per
26 shift at least twice a week during their lunch breaks. Plaintiffs and the Proposed Class are not
27 compensated for this travel time, nor are they reimbursed for use of their personal vehicle to
28 perform required work. This travel time usually takes 15 to 30 minutes to go from field to field.

1 For employees that were required to work out of town picking chili peppers, they needed to arrive
2 three (3) to three and a half (3 ½) hours early to take the bus at 4:00 a.m. Additionally, these
3 employees that were working out of town would have to take the bus back for (3) hours after their
4 shift ends to get back to Santa Maria, CA. Plaintiffs and the Proposed Class are not compensated
5 for this travel time, and if they were, it was usually only one (1) hour, instead of the five (5) or six
6 (6) hours Plaintiffs and the Proposed Class spent traveling to the out of town field.

7 53. Additionally, when Plaintiffs and the Proposed Class were required to pick
8 blueberries for juicing, Plaintiffs and the Proposed Class would not be paid for the time they were
9 picking blueberries for juicing. Plaintiffs and the Proposed Class were required to produce at least
10 one jar per hour, however Defendant failed to pay Plaintiffs and the Proposed Class on a piece-
11 rate basis for picking blueberries for juicing.

12 54. With regard to post-shift work, at the end of each working shift, Plaintiffs and the
13 Proposed Class are instructed by the foreman to finish the “corte” (section) before leaving the row.
14 Plaintiffs and the Proposed Class would work one (1) to two (2) hours after the end of their shift
15 in order to finish the section or row they were working on. This time spent finishing their section
16 or row was performed after being “clocked out” and as such, Plaintiffs and the Proposed Class are
17 not compensated for this time worked even though this time is compensable. Additionally,
18 Plaintiffs and the Proposed Class are required to do a line drop off of their boxes which takes 10
19 to 15 minutes every day. Plaintiffs and the Proposed Class also spend time after their scheduled
20 shift putting away tools and other work-related equipment, including boxes and jars used to pick
21 the crops. Plaintiffs and the Proposed Class have to walk back to their cars which were parked
22 fifteen (15) to thirty (30) minutes away while carrying their harvest carts. This time spent putting
23 away equipment and carrying their harvesting carts back to their cars is performed after being
24 “clocked out” and as such, Plaintiffs and the Proposed Class are not compensated for this time
25 worked even though this time is compensable.

26 55. Additionally, Defendant has had a consistent policy of failing to pay wages and/or
27 overtime to Plaintiffs and all Proposed Class members at the appropriate rate of pay. Plaintiffs and
28 other Proposed Class members were not properly compensated for all hours worked over eight (8)

1 hours in one day or forty (40) hours in one week. Plaintiffs and the Proposed Class were not
2 properly compensated for overtime worked because Defendant failed to pay Plaintiffs and the
3 Proposed Class for all hours worked over 8 hours per day or 40 hours per week. As such, Plaintiffs
4 and the Proposed Class were not paid overtime pay despite working over eight (8) hours in one
5 day or forty (40) hours in one week.

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

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

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

16 **VII.**

17 **SECOND CAUSE OF ACTION**

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

19 **FAILURE TO TIMELY PAY MINIMUM WAGES PURSUANT TO LABOR CODE §**

20 **1194**

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

23 60. Labor Code § 1194(a) provides that it is unlawful to pay less than the minimum
24 wage established by law. Defendant's failure to pay minimum wage and required by IWC Wage
25 Order 14 violates Labor Code § 1194(a) and is therefore unlawful. Plaintiffs and the Proposed
26 Class were forced to work on a regular and consistent basis without being paid all minimum wages
27 due.

28 61. Plaintiffs and all Proposed Class members were forced to work on a regular and

1 consistent basis without receiving compensation for all hours worked at the proper rate. Plaintiffs
2 and the Proposed Class were paid on a piece rate basis for work picking berries and chili peppers.
3 Plaintiffs and the Proposed Class would not earn enough commissions to meet the minimum wage
4 requirements under California law.

5 62. Additionally, since Plaintiffs and the Proposed Class were not paid for their pre-
6 shift, travel time, and post-shift compensable activities, they did not earn enough compensation to
7 meet the minimum wage requirements under California law.

8 63. Labor Code § 1194.2 provides that in any action under to recover wages because
9 of the payment of a wage less than minimum wage, an employee shall be entitled to recover
10 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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

14 **VIII.**

15 **THIRD CAUSE OF ACTION**

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

17 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

18 **LABOR CODE § 226.7 AND LABOR CODE § 512**

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

21 66. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
22 compensation for each meal period the employer fails to provide. Employees are entitled to a first
23 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
24 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
25 over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after
26 no more than ten (10) hours of work. Defendant failed to maintain a policy informing Plaintiffs
27 and the Proposed Class of these rights and failed to provide timely, uninterrupted meal periods.

28 67. Plaintiffs and the Proposed Class consistently worked shifts over five (5) hours.

1 Defendant failed to provide Plaintiffs and the Proposed Class with proper meal periods of not less
2 than thirty (30) minutes as required by the Labor Code during the relevant time period.

3 68. Defendant has had a consistent policy of: (1) failing to provide Plaintiffs and the
4 Proposed Class compliant meal periods; and (2) failed to pay such employees one (1) hour of pay
5 at the employees regular rate of compensation for each workday that the first meal period was not
6 provided within the first (5) hours of the shift or that a second meal period was not provided.
7 Depending on the crops that the employees were working on that day, Plaintiffs and the Proposed
8 Class would be interrupted during their lunch break in order to travel to the next field. This
9 happened at least twice a week.

10 69. Defendant has had a consistent policy of failing to pay Plaintiffs and the Proposed
11 Class one (1) hour of pay at the employees' regular rate of compensation for each workday that al
12 required meal periods were not provided, as required by California state wage and hour laws. Very
13 recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court
14 set forth the formula for calculating the one extra hour of premium pay that employees are owed
15 if an Employer fails to provide a compliant meal period or rest break. Specifically, the Court held
16 that those premium payments must include the hourly value of any nondiscretionary earnings (such
17 as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate.
18 Defendants have had a consistent policy of failing to pay meal period premiums in compliance
19 with California law.

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

23 **IX.**

24 **FOURTH CAUSE OF ACTION**

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

26 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

27 **LABOR CODE § 2802**

28 71. Plaintiffs, on behalf of themselves and the Proposed Class, reallege and incorporate

1 by reference all previous paragraphs.

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

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

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

10 75. When employees first begin performing work for Defendant, they are provided a
11 pair of scissors for pruning, a shovel, a plastic box for the berries, and a five gallon bucket for
12 harvesting chili peppers. However, these tools are of poor quality and are required to be returned
13 every day after finishing work. Additionally, Defendant charges Plaintiffs and the Proposed Class
14 members for any lost or broken tools. The tools provided by Defendant do not allow Plaintiffs and
15 the Proposed Class to perform their work adequately.

16 76. Defendant also requires Plaintiffs and the Proposed Class to purchase a variety of
17 tools in order to perform their work adequately. These tools/equipment included: (1) the harvest
18 carts, which were a two time \$55.00 charge (one for berries, one for chilis), with \$15.00 for
19 replacement tires that would be replaced twice a year; (2) boots, \$50.00 for one pair a season; (3)
20 gloves for crop harvesting, costing \$28.00 for a box of 100 gloves, which would need to be
21 replenished twice a week; (4) chaps, \$18.00 a pair for one season; (5) specialized scissors for
22 strawberry pruning, \$14.00; (6) specialized scissors for blueberry pruning, \$40.00; (7) a
23 specialized knife for strawberry and zucchini pruning, \$15.00; (8) a specialized knife for
24 strawberry canning, \$10.00; (9) a large basket to carry the buckets for berries, which is normally
25 provided by Defendant, but in poor quality so Plaintiffs and the Proposed Class are required to
26 purchase for \$50.00 in order to perform their work adequately; (10) a “bell” to carry the basket for
27 the berries, \$20.00 - \$30.00 per season. Defendants fail to reimburse Plaintiffs and the Proposed
28 Class for the costs associated with purchasing and using these tools/equipment.

77. Defendant also required Plaintiffs and all Proposed Class members 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 Proposed Class used their own vehicles to travel from field to field. Defendant did not reimburse Plaintiffs and the Proposed Class for their vehicle use for travel between Defendant's job sites during the course of a work shift, in violation of California law.

78. As a result of the unlawful acts of Defendants, Plaintiffs and the Proposed Class 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.

X.

FIFTH CAUSE OF ACTION

PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS

VIOLATION OF LABOR CODE § 226(A)

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

80. 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).)

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

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

83. 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 Proposed Class are issued wage statements that do not include the total hours worked by the employee.

84. 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 Proposed 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 a each hourly rate by the employee.

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

86. 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.

XI.

SIXTH CAUSE OF ACTION

PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS

VIOLATION OF LABOR CODE §§ 245.5 AND 246

87. Plaintiffs incorporate each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

88. Labor Code §245.5 and 246 provide that “[a]n employer shall provide an employee with written notice that set forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement

described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages."

89. Here, Defendant has failed to set forth the amount of sick leave available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage statements described in Labor Code § 226 that it issues to Plaintiffs and all Proposed Class members. Therefore, Defendant has violated Labor Code §§ 245.5 and 246 with respect to Plaintiffs and all Proposed Class members.

90. As a proximate result of Defendant's violations of Labor Code §§ 245.5 and 246, Plaintiffs and the Proposed Class have been damaged in an amount according to proof at the time of trial.

XII.

SEVENTH CAUSE OF ACTION

PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS

WAITING TIME PENALTIES UNDER LABOR CODE § 203

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

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

93. 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.

94. As such, Defendant failed to pay Plaintiffs and all Proposed Class members 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 §§201, 202, and 203. (See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754, reh'g denied (June 13, 2018), review denied (Aug. 8, 2018), allowing named Plaintiffs to pursue PAGA penalties for violations not personally suffered.

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

XIII.

EIGHTH CAUSE OF ACTION

PLAINTIFFS ON BEHALF OF THEMSELVES AND THE PROPOSED CLASS

UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200

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

97. This is a Class Action for Unfair Business Practices. Plaintiffs, on behalf of themselves, on behalf of the general public, and on behalf of the Proposed Class, 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, the general public, and the Proposed Class. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

98. 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.

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

100. 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.

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

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

103. 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.

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

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

XIV.

NINTH CAUSE OF ACTION

PLAINTIFFS ON BEHALF OF THEMSELVES AND ALL AGGRIEVED EMPLOYEES

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ

106. Plaintiffs, on behalf of themselves and all aggrieved employees, reallege and incorporate by reference all previous paragraphs.

107. As a result of the acts alleged above and specifically incorporated herein, Plaintiffs

1 seeks penalties under Labor Code § 2699, et seq. use of Defendant’s violation of §§ 201, 202, 203,
2 226(a), 226.7, 245.5, 246, 510, 512, 1194, 1194.2, 1199, and 2802.; Wage Order 14-2001; and
3 California Code of Regulations, Title 8, Section 11140, which call for civil penalties.

4 108. Plaintiffs bring this representative action on behalf of themselves and the State of
5 California as well as a group of aggrieved employees defined as: All persons who are employed
6 or have been employed as a non-exempt employee by KEM Farms, Inc., in the State of California
7 since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved
8 employees”).

9 109. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code §
10 2699, et seq. because of Defendant’s violation of Labor §§ 201, 202, 203, 226(a), 226.7, 245.5,
11 246, 510, 512, 1194, 1194.2, 1199, and 2802, which call for civil penalties.

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

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

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

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

18 114. Pursuant to Labor Code § 2699.3(a)(1), Plaintiffs uploaded a notice letter to the
19 LWDA¹ and mailed a letter by certified mail to Defendant’s entity address, which is 610 W Boone
20 St., Santa Maria, CA 93458, as proscribed by the Code on April 23, 2024, describing Defendant’s
21 conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 245.5, 246, 510, 512, 1194,
22 1194.2, 1199, and 2802 (*see* Exhibit “1.”) Plaintiffs also obtained an e-filing confirmation from
23 the LWDA confirming receipt of the notice (*see* Exhibit “2”). Additionally, Plaintiffs received
24 signed green return receipts from Defendant, indicating that it received Plaintiffs’ letter. (*see*
25 Exhibit “3”).

26 115. As no letter evidencing the LWDA’s intention to investigate was received by
27

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

1 Plaintiffs' Counsel within sixty-five (65) calendar days, Plaintiffs are entitled to commence a civil
2 action as though the LWDA had not chosen to investigate pursuant to Labor Code
3 §2699.3(a)(2)(A). Plaintiffs will also provide the LWDA with a filed-stamped copy of the First
4 Amended Class and Representative Action Complaint immediately.

5 **RELIEF REQUESTED**

6 **WHEREFORE**, Plaintiffs prays for the following relief:

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

10 2. For liquidated damages in the amount of unpaid minimum wages not paid to
11 Plaintiffs and each member of the Proposed Class from at least four (4) years prior to the filing of
12 this action to the present as may be proven;

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

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

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

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

24 7. An award of prejudgment and post judgment interest;

25 8. An order enjoining Defendant and its agents, servants, and employees, and all
26 persons acting under, in concert with, or for it from providing Plaintiffs with proper wages and/or
27 overtime, meal periods, accurate itemized wage statements, and wages upon
28 termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 245.5, 246, 510,

512, 1194, 1194.2, 1199, 2802, and IWC 14-2001;

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

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

11. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 245.5, 246, 510, 512, 1194, 1194.2, 1199, and 2802;

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

13. An award of attorneys' fees; and

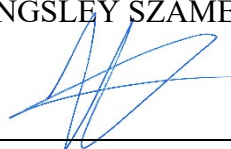
14. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

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

DATED: June 28, 2024

KINGSLEY SZAMET & LY

By: 

Liane Katzenstein Ly

Attorneys for Plaintiffs and the Proposed Class

EXHIBIT "1"



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

April 23, 2024

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

KEM Farms, Inc.
610 W Boone St.
Santa Maria, CA 93458
Via Certified Mailing # 7022 3330 0002 1335 9612

Re: Paulina Santiago Garcia; Maximino Villanueva Vasquez; Catalina Galvez
Santiago v. KEM Farms, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Paulina Santiago Garcia; Maximino Villanueva Vasquez; Catalina Galvez Santiago (“Plaintiffs”) and a proposed group of current and former employees working for KEM Farms, 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 persons who are employed or have been employed as a non-exempt employee by KEM Farms, Inc., in the State of California since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Plaintiffs and the aggrieved employees worked for Defendant in or near Santa Barbara County, California as seasonal agricultural workers. Plaintiffs and the aggrieved employees worked in the cultivation, harvest, and juicing, of berries and chili peppers, 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 an hourly basis and also earned a piece rate for work picking crops.

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an

LABOR & WORKFORCE DEVELOPMENT AGENCY

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employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the *regular rate of pay* for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation must be included in the regular rate of pay for the purposes of determining correct overtime rates.

Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to 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 the aggrieved employees are required to report to work prior to their scheduled shift and perform work, but are routinely told by Defendants to wait anywhere from approximately 15 to 30 minutes before Plaintiffs and the aggrieved employees can begin their scheduled shifts. Plaintiffs and the aggrieved employees are required to walk 5 to 10 minutes every day walking to the field and prepping material for the day of work, including bringing the necessary tools required. During the rainy season, Plaintiffs and the aggrieved employees were required to wait around 30 min to 1 hour at least twice a week before beginning their scheduled shifts. Additionally, employees that worked picking chili peppers were occasionally required to report to work 3 to 3 and a half hours prior to their shift when Defendant required the employees to work out of town. This waiting time and work performed prior to Plaintiffs’ and the aggrieved employees’ scheduled shift occurs daily and Plaintiffs and the aggrieved employees are not compensated for this wait time or work performed. These activities and time are compensable, but Defendants fail to pay Plaintiffs and the aggrieved employees for this time worked.

In the middle of Plaintiffs’ and the aggrieved employees shifts, Defendant required Plaintiffs and the aggrieved employees to travel between fields once they are done picking at one field. Plaintiffs and the aggrieved employees use their own vehicle(s) to travel to between fields per shift at least twice a week during their lunch breaks. Plaintiffs and the aggrieved employees are not compensated for this travel time, nor are they reimbursed for use of their personal vehicle to perform required work. This travel time usually takes 15 to 30 minutes to go from field to field. For employees that were required to work out of town picking chili peppers, they needed to arrive three (3) to three and a half (3 ½) hours early to take the bus at 4:00 a.m. Additionally, these employees that were working out of town would have to take the bus back for (3) hours after their shift ends to get back to Santa Maria, CA. Plaintiffs and the aggrieved employees are not compensated for this travel time, and if they were, it was usually only one (1) hour, instead

LABOR & WORKFORCE DEVELOPMENT AGENCY

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of the five (5) or six (6) hours Plaintiffs and the aggrieved employees spent traveling to the out of town field.

Additionally, when Plaintiffs and the aggrieved employees were required to pick blueberries for juicing, Plaintiffs and the aggrieved employees would not be paid for the time they were picking blueberries for juicing. Plaintiffs and the aggrieved employees were required to produce at least one jar per hour, however Defendant failed to pay Plaintiffs and the aggrieved employees on a piece-rate basis for picking blueberries for juicing.

With regard to 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 one (1) to two (2) hours 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, Plaintiffs and the aggrieved employees are required to do a line drop off of their boxes which takes 10 to 15 minutes every day. Plaintiffs and the aggrieved employees also spend time after their scheduled shift putting away tools and other work-related equipment, including boxes and jars used to pick the crops. 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 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.

Additionally, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiffs and all aggrieved employees at the appropriate rate of pay. 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 overtime worked because Defendant failed to pay Plaintiffs and the aggrieved employees for all hours worked over 8 hours per day or 40 hours per week. As such, Plaintiff and the aggrieved employees were not paid overtime pay despite working over eight (8) hours in one day or forty (40) hours in one week.

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

Additionally, Defendant has had a consistent policy of failing to pay all minimum wages to Plaintiffs and all aggrieved employees. Plaintiffs and all aggrieved employees were forced to work on a regular and consistent basis without receiving compensation for all hours worked at the proper rate. Plaintiffs and the aggrieved employees were paid on a piece rate basis for work picking berries and chili peppers. Plaintiffs and the aggrieved employees would not earn enough commissions to meet the minimum wage requirements under California law. Additionally, since

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California Labor Code §2699 Penalties

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Plaintiffs and the aggrieved employees were not paid for their pre-shift, travel time, and post-shift compensable activities, they did not earn enough compensation to meet the minimum wage requirements under California law. Labor Code § 1194.2 provides that in any action under to recover wages because of the payment of a wage less than minimum wage, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Likewise, the Wage Orders (14-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. 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 not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff 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 compliant meal periods; and (2) failed to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the first meal period was not provided within the first (5) hours of the shift or that a second meal period was not provided. Depending on the crops that the employees were working on that day, Plaintiffs and the aggrieved employees would be interrupted during their lunch break in order to travel to the next field. This happened at least twice a week.

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, Defendants have had a consistent policy of failing to pay meal period premiums in compliance with California law.

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

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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 a pair of scissors for pruning, a shovel, a plastic box for the berries, and a five gallon bucket for harvesting chili peppers. However, these tools are of poor quality and are required to be 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 two time \$55.00 charge (one for berries, one for chilis), with \$15.00 for replacement tires that would be replaced twice a year; (2) boots, \$50.00 for one pair a season; (3) gloves for crop harvesting, costing \$28.00 for a box of 100 gloves, which would need to be replenished twice a week; (4) chaps, \$18.00 a pair for one season; (5) specialized scissors for strawberry pruning, \$14.00; (6) specialized scissors for blueberry pruning, \$40.00; (7) a specialized knife for strawberry and zucchini pruning, \$15.00; (8) a specialized knife for strawberry canning, \$10.00; (9) a large basket to carry the buckets for berries, which is normally provided by Defendant, but in poor quality so Plaintiffs and the aggrieved employees are required to purchase for \$50.00 in order to perform their work adequately; (10) a “bell” to carry the basket for the berries, \$20.00 - \$30.00 per season. Defendants fail to reimburse Plaintiffs and the aggrieved employees for the costs associated with purchasing and using these tools/equipment.

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. Plaintiffs and the aggrieved employees are issued wage statements that do not include the total hours worked by the employee. As such, Plaintiffs is an aggrieved employee within the meaning PAGA and Defendants has violated Labor

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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 §245.5 and 246 provide that “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.” Here, Defendant has failed to set forth the amount of sick leave available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage statements described in Section 226 that it issues to Plaintiffs and all aggrieved employees. Therefore, Defendant has violated Labor Code §245.5 and 246 with respect to our client and all aggrieved employees. Thus, Plaintiffs are aggrieved employees within the meaning of PAGA.

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, Plaintiffs and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiffs 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. As such, Defendant failed to pay Plaintiffs 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 §§201, 202, and 203. (See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754, reh’g denied (June 13, 2018), review denied (Aug. 8, 2018), allowing named Plaintiff to pursue PAGA penalties for violations not personally suffered.

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, 245.5, 246, 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.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

April 23, 2024

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Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly

[LKL/tg]

Cc: 1. Martinez Aguila-socho Law, Inc., P.O. Box 1998, , Bakersfield, CA93303

EXHIBIT "2"



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 Szamet & Ly

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

Your Email Address *

service@kingsleykingsley.com

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 *

Paulina Santiago Garcia

Plaintiff/Aggrieved Employee Occupation *

Farmworker

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Maximino Villanueva Vasquez

Plaintiff/Aggrieved Employee Occupation *

Farmworker

[Remove](#)

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Catalina Galvez Santiago

Plaintiff/Aggrieved Employee Occupation *

Farmworker

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

Employer Information

Employer Entity Type

Please select...

Employer Name *

KEM Farms, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

610 W Boone St.

Employer City *

Santa Maria

Employer State *

California

Employer Zip/Postal Code *

93458

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 *

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 *

Credit Card Expiration Year *

mm

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File

LWDA Letter ... Farms 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.

☒ 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 4/23/2024 10:33 AM

To:Service Email <service@kingsleylawyers.com>

External Email!

4/23/2024

LWDA Case No. LWDA-CM-1023908-24

Law Firm : Kingsley Szamet & Ly

Plaintiff Name : Paulina Santiago Garcia, Maximino Villanueva Vasquez, Catalina Galvez Santiago

Employer: KEM Farms, 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: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

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

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

on behalf of

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

Tue 4/23/2024 10:34 AM

To:Service Email <service@kingsleylawyers.com>

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-1023908-24

Order Number: ORD-000280111

Total:\$75.00

Card Type: XXXXXXXXXX

Date: 4/23/2024

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Boulevard, Suite 1200

Encino, California

91436

EXHIBIT "3"

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:

KEM Farms, Inc.
610 W Boone St.
Santa Maria, CA 93458



9590 9402 8465 3186 4286 27

2.

7022 3330 0002 1335 9612

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Ken Farms Inc

C. Date of Delivery

04/26/24

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

APR 25 2024

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 #



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

9590 9402 8465 3186 4286 27

United States
Postal Service

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

Kingsley Janet & Ly
16133 Ventura Blvd, Ste 1200
Encino, CA 91426

LWA - LACA Ctr 4.23.24
Ken Farns, Inc.