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ALEJO DOMINGUEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

ALEJO DOMINGUEZ, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

FOOTHILL PACKING, INC. and DOES 1-
10, inclusive,

Defendants.

Case No. 24CV002013

Class Action

FIRST AMENDED COMPLAINT

1. Failure to Provide Meal Periods
2. Failure to Provide Rest Periods
3. Failure to Pay Minimum Wages
4. Failure to Pay Overtime Wages
5. Unfair Competition
6. Failure to Provide Accurate Wage Statements
7. Failure to Pay All Wages Owed Upon Termination
8. Civil Penalties Under PAGA

DEMAND FOR JURY TRIAL

Plaintiff Alejo Dominguez ("Plaintiff"), on behalf of himself and all others similarly situated,
complains and alleges as follows:

INTRODUCTION

1. This class action and representative action lawsuit arises out of the failure of defendant Foothill Packing, Inc. ("Defendant") to comply with various labor laws with respect to non-exempt hourly paid agricultural employees who operate harvest machinery or tractors in the field ("Machine Operators"). Defendant fails to provide Machine Operators with timely and/or duty-free meal periods;

1 Defendant fails to provide Machine Operators with all legally required rest periods; Defendant fails to
2 pay Machine Operators all the minimum wages owed to them; Defendant fails to pay Machine
3 Operators all the overtime wages owed to them; Defendant fails to provide Machine Operators with
4 accurate wage statements; and Defendant fails to pay all wages owed to employees when their
5 employment ends. Defendant's violations of the Labor Code also make Defendant liable for civil
6 penalties – 75% payable to the Labor Workforce Development Agency ("LWDA") and 25% payable to
7 aggrieved employees -- under the Private Attorneys General Act ("PAGA"). Plaintiff seeks all
8 damages, restitution, and penalties to which he and similarly situated employees are entitled to for
9 Defendant's violations of the law, which also constitute unfair business practices in violation of
10 Business and Professions Code Section 17200.

11 **JURISDICTION AND VENUE**

12 2. Venue is proper in the County of Monterey because Plaintiff and other class members
13 worked for Defendant in the County of Monterey and the obligations of Defendant to Plaintiff and
14 other class members under the California Labor Code were breached in the County of Monterey.

15 3. The California Superior Court has jurisdiction in this matter because Plaintiff is a
16 resident of California, Defendant is qualified to do business in California, and Defendant regularly
17 conducts business in California. Further, there is no federal question at issue as the claims herein are
18 based solely on California law.

19 **THE PARTIES**

20 **A. Plaintiff**

21 4. Plaintiff has worked as a Machine Operator for Defendant on a seasonal basis (from
22 around March or April to September or October) since 2019. During his employment as a Machine
23 Operator with Defendant, the start of Plaintiff's workday was earlier than the start of the workday for
24 the crew of harvest workers in the field ("Harvest Workers"). Prior to the 2023 season, Plaintiff began
25 his work as a Machine Operator two hours before the Harvest Workers began their work. During the
26 2023 season, Plaintiff began his work as Machine Operator at least 1 and 3/4 hours before the Harvest
27 Workers began their work but Defendant only paid Plaintiff for one and 1½ hours of the time worked
28 before the Harvest Workers began their work. During his employment as a Machine Operator with

1 Defendant, Plaintiff was always provided meal periods and rest periods at the same time that meal
2 periods and rest periods were provided to the Harvest Workers. Because Plaintiff began his work as a
3 Machine Operator 1 and $\frac{3}{4}$ hours or 2 hours before the Harvest Workers, Plaintiff was not provided
4 with timely meal periods or rest periods when he worked as a Machine Operator for Defendant. When
5 he worked as a Machine Operator for Defendant Plaintiff was also not provided all legally required
6 meal periods or rest periods. When Plaintiff worked as a Machine Operator more than 6 hours but
7 fewer than 9 hours in a workday prior to 2023, or more than 6 hours but fewer than 8.75 hours in a
8 workday since 2023; Plaintiff was not provided a second rest period; and when Plaintiff worked as a
9 Machine Operator more than 10 hours in a workday, Plaintiff was not provided with a second meal
10 period or a third rest period. The meal periods provided to Plaintiff when he worked as a Machine
11 Operator were also not duty-free for 30 minutes because, during the 30 minute meal period, it took
12 Plaintiff several minutes at the start of the meal period to turn off his machine and wait for Harvest
13 Workers to walk from the field to the meal area and doff their protective clothing and equipment before
14 Plaintiff could start walking from the field to the meal area; and it took Plaintiff several minutes at the
15 end of the meal period to walk from the meal area to the field, wait for Harvest Workers to don their
16 protective clothing equipment and walk from the meal area to the field, and turn on his machine.
17 Defendant did not pay Plaintiff wages for meal period time that, because meal periods were not duty-
18 free for 30 minutes, constituted compensable "hours worked." When Plaintiff worked overtime hours
19 as a Machine Operator, Defendant's failure to pay Plaintiff for all hours worked before Harvest
20 Workers began their work (starting with the 2023 season) and/or Defendant's failure to pay Plaintiff
21 wages for meal period time resulted in Defendant not paying Plaintiff all the overtime wages owed to
22 him. Defendant also failed to pay Plaintiff premium wages for meal period and rest period violations
23 when he worked as a Machine Operator. As a result of not paying Plaintiff all the minimum wages,
24 overtime wages and/or premium owed to him when Plaintiff worked for Defendant as a Machine
25 Operator, Defendant failed to provide Plaintiff with accurate wage statements when he worked as a
26 Machine Operator and Defendant failed to pay Plaintiff all the wages owed to him when his seasonal
27 employment as a Machine Operator ended each season.

1 **B. Defendants**

2 5. At all relevant times, Defendant has been a corporation organized under the law of the
3 State of California with a principal place of business in Salinas, California. Defendant is engaged in
4 the business of harvesting and packing of agricultural products. Defendant is or was the employer of
5 Plaintiff and other similarly situated employees at the time Defendant breached its legal obligations to
6 them as described herein, and Defendant continues to breach legal obligations owed to similarly
7 situated employees currently employed by Defendant.

8 6. Plaintiff is ignorant of the true name, capacity, relationship and extent of participation in
9 the conduct herein alleged, of the Defendants sued herein as DOES 1 through 10, but is informed and
10 believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct
11 alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend this
12 complaint to allege the true names and capacities of the DOE Defendants when ascertained.

13 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all
14 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
15 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
16 attributable to the other Defendants.

17 **CLASS ACTION ALLEGATIONS**

18 8. Plaintiff brings his class action claims on behalf of himself and all other similarly
19 situated employees (collectively the “Class”) as a class action pursuant to Section 382 of the Code of
20 Civil Procedure. The members of the Class belong to the Machine Operators Class, Restitution Class,
21 Wage Statement Class, and Final Wages Class which are defined as follows:

22 **Machine Operators Class:** All persons who, at any time since the date three years before the
23 filing of the complaint in this action, worked for Defendant in California as hourly paid non-exempt
24 agricultural employees who operated harvest machinery or a tractor in the field as part of a harvest
25 crew.

26 **Rest Period Class:** All persons who, at any time since the date three years before the filing of
27 the complaint in this action, worked for Defendant in California as hourly paid non-exempt agricultural
28 employees who operated harvest machinery or a tractor in the field as part of a harvest crew, who

worked either: 1) more than 6 but fewer than 9 hours in a workday prior to 2023; 2) more than 6 hours but fewer than 8.75 hours in a workday since 2023; or 3) more than 10 hours in a workday.

Second Meal Period Class: All persons who, at any time since the date three years before the filing of the complaint in this action, worked for Defendant in California as hourly paid non-exempt agricultural employees who operated harvest machinery or a tractor in the field as part of a harvest crew, who worked more than 10 hours in a workday.

Overtime Class: All persons who, at any time since the date three years before the filing of the complaint in this action, worked for Defendant in California as hourly paid non-exempt agricultural employees who operated harvest machinery or a tractor in the field as part of a harvest crew, who worked overtime hours during a workweek.

Restitution Class: All persons who, at any time since the date four years before the filing of the complaint in this action, worked for Defendant in California as hourly paid non-exempt agricultural employees who operated harvest machinery or a tractor in the field as part of a harvest crew.

Wage Statement Class: All persons who, at any time since the date one year before the filing of the complaint in this action, worked for Defendant in California as hourly paid non-exempt agricultural employees who operated harvest machinery or a tractor in the field as part of a harvest crew.

Final Wages Class: All persons who worked for Defendant in California as hourly paid non-exempt agricultural employees who operated harvest machinery or a tractor in the field as part of a harvest crew whose employment ended (whether by discharge, resignation, or layoff at the end of seasonal employment) at any time since the date three years before the filing of the complaint in this action.

9. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure Section 382 because there is a well-defined community of interests among many persons who comprise a readily ascertainable class:

- a. The Class members are so numerous that the individual joinder of all of them as named plaintiffs is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon

1 allege that there are not less than 50 members in the Machine Operators Class, not
2 less than 50 members in the Rest Period Class, not less than 50 members in the
3 Second Meal Period Class, not less than 50 members in the Overtime Class, not
4 less than 50 members in the Restitution Class, not less than 50 members in the
5 Wage Statement Class, and not less than 50 members in the Final Wages Class.

6 b. Common questions of law and fact exist as to members of the Class and
7 predominate over any questions that affect only individual members of the Class.

8 These common questions include, but are not limited to:

9 (1) Did Defendant have a policy or practice of not providing Machine
10 Operators with meal periods that were duty free for 30 minutes?

11 (2) Did Defendant have a policy or practice of not providing Machine
12 Operators with timely meal periods?

13 (3) Did Defendant have a policy or practice of not providing Machine
14 Operators with timely rest periods?

15 (4) Did Defendant have a policy or practice of not providing Machine
16 Operators with second meal periods when they worked more than 10 hours in a
17 workday?

18 (5) Did Defendant have a policy or practice of not providing Machine
19 Operators with second rest periods when they worked more than 6 hours but fewer
20 than 9 hours in a workday prior to 2023?

21 (5) Did Defendant have a policy or practice of not providing Machine
22 Operators with second rest periods when they worked more than 6 hours but fewer
23 than 8.75 hours in a workday since 2023?

24 (6) Did Defendant have a policy or practice of not providing Machine
25 Operators with third rest periods when they worked more than 10 hours in a
26 workday?

27 (7) Did Defendant have a policy or practice of not paying Machine Operators
28 all the minimum wages owed to them?

1 (8) Did Defendant have a policy or practice of not paying Machine Operators
2 all the overtime wages owed to them?

3 (9) Did Defendant have a policy or practice of not providing Machine
4 Operators with accurate or legally compliant wage statements?

5 (10) Did Defendant have a policy or practice of not paying all wages earned to
6 Machine Operators whose employment ended?

7 c. Plaintiff is a member of the Machine Operators Class, Rest Period Class, Second
8 Meal Period Class, Overtime Class, Wage Statement Class, and Final Wages
9 Class, and the claims of Plaintiff are typical of the claims of the other class
10 members that Plaintiff seeks to represent. During his employment as a Machine
11 Operator with Defendant, Plaintiff was subjected to the same unlawful practices
12 that other Machine Operators were subjected to when they worked for Defendant.
13 Plaintiff and other members of the Class suffered the same injuries and seek the
14 same relief.

15 d. Plaintiff will adequately and fairly protect the interests of the members of the
16 Class. Plaintiff has no interest adverse to the interests of absent class members
17 and Plaintiff is represented by attorneys with substantial class action experience in
18 civil litigation and employment law.

19 e. A class action is superior to other available means (if any) for fair and efficient
20 adjudication of the claims of the Class and would be beneficial for the parties and
21 the court. Class action treatment will allow a large number of similarly situated
22 persons to prosecute their common claims in a single forum simultaneously,
23 efficiently, and without the unnecessary duplication of effort and expense that
24 numerous individual actions would require. The monetary amounts due to many
25 individual Class members are likely to be relatively small, and the burden and
26 expense of litigation would make it difficult or impossible for Class members to
27 seek and obtain relief through individual lawsuits. A class action will serve an
28

1 important public interest by providing Class members an effective mechanism for
2 redress of violation of their statutory rights.

3 10. Plaintiff is not aware of any difficulties likely to be encountered in the management of
4 this action that would preclude its maintenance as a class action, but reserve the right to modify his
5 allegations and/or the class definitions based on further investigation, discovery or legal developments.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS**

8 **(By Plaintiff, the Machine Operators Class and the Second Meal Period Class against**
9 **Defendants)**

10 11. Plaintiff incorporates paragraphs 1 through 10 of this complaint as if fully alleged herein.

11 12. At all relevant times, Plaintiff and the other members of the Machine Operators Class
12 and the Second Meal Period Class were employees of Defendant covered by Labor Code Section 226.7,
13 Labor Code Section 512, and Wage Order 14.

14 13. Pursuant to Labor Code Section 512 and Wage Order 14, Plaintiff and the other
15 members of the Machine Operators Class were entitled to a duty-free meal period of at least 30 minutes
16 before the start of their sixth hour of work on a workday; and Plaintiff and the other members of the
17 Second Meal Period Class were entitled to a second duty-free meal period of at least 30 minutes when
18 they worked more than 10 hours in a workday. Pursuant to Labor Code Section 226.7, Plaintiff and the
19 other members of the Machine Operators Class and the Second Meal Period Class were entitled to
20 premium wages equal to one hour of pay at their regular rate of pay for every day that Defendant failed
21 to provide a meal period in accordance with Wage Order 14.

22 14. Defendant failed to provide Plaintiff and other members of the Machine Operators Class
23 and the Second Meal Period Class with legally compliant meal periods in accordance with Labor Code
24 Section 512 and Wage Order 14 and failed to pay Plaintiff and other members of the Machine Operators
25 Class and the Second Meal Period Class Employees premium wages in accordance with Labor Code
26 Section 226.7 for meal period violations Plaintiff is informed and believes and thereon alleges that,
27 during the limitations period applicable to this cause of action, Defendant had a policy or practice of
28 not providing Machine Operators a timely first meal period, not providing Machine Operators a meal

1 period that was duty free for at least 30 minutes, and not providing Machine Operators a second meal
2 period when they worked more than 10 hours in a workday; and Defendant had a policy or practice of
3 not paying Machine Operators premium wages for meal period violations.

4 15. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Machine
5 Operators Class and the Second Meal Period Class have suffered damages in an amount, subject to
6 proof, to the extent they were not paid all the premium wages owed to them for meal period violations.

7 16. Plaintiff and the other members of the Machine Operators Class and the Second Meal
8 Period Class are entitled to recover reasonable attorney's fees in connection with their meal period
9 claims pursuant to Code of Civil Procedure Section 1021.5, the substantial benefit doctrine and/or the
10 common fund doctrine.

11 **SECOND CAUSE OF ACTION**

12 **(By Plaintiff, the Machine Operators Class and the Rest Period Class against Defendants)**

13 17. Plaintiff incorporates paragraphs 1 through 10 of this complaint as if fully alleged herein.

14 18. At all relevant times, Plaintiff and the other members of the Machine Operators Class
15 and the Rest Period Class were employees of Defendant covered by Labor Code Section 226.7 and
16 Wage Order 14.

17 19. Pursuant to Wage Order 14, Plaintiff and the other members of the Machine Operators
18 Class and the Rest Period Class were entitled to a duty-free rest period of at least 10 for every four
19 hours (or major fraction thereof) worked on a workday. Pursuant to Labor Code Section 226.7,
20 Plaintiff and the other members of the Machine Operators Class and the Rest Period Class were entitled
21 to premium wages equal to one hour of pay at their regular rate of pay for every day that Defendant
22 failed to provide a rest period in accordance with Wage Order 14.

23 20. Defendant failed to provide Plaintiff and other members of the Machine Operators Class
24 and the Rest Period Class with legally compliant rest periods in accordance with Wage Order 14 and
25 failed to pay Plaintiff and other members of the Machine Operators Class and the Rest Period Class
26 premium wages in accordance with Labor Code Section 226.7 for rest period violations. Plaintiff is
27 informed and believes and thereon alleges that, during the limitations period applicable to this cause of
28 action, Defendant had a policy or practice of not providing Machine Operators a timely first rest period,

1 not providing Machine Operators a second rest period when they worked more than 6 hours but fewer
2 than 9 hours in a workday prior to 2023, not providing Machine Operators a second rest period when
3 they worked more than 6 hours but fewer than 8.75 hours in a workday since 2023, and not providing
4 Machine Operators a second rest period when they worked more than 10 hours in a workday; and
5 Defendant had a policy or practice of not paying Machine Operators premium wages for rest period
6 violations.

7 21. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Machine
8 Operators Class and the Rest Period Class have suffered damages in an amount, subject to proof, to the
9 extent they were not paid all the premium wages owed to them for rest period violations.

10 22. Plaintiff and the other members of the Machine Operators Class and the Rest Period
11 Class entitled to recover reasonable attorney's fees in connection with their rest period claims pursuant
12 to Code of Civil Procedure Section 1021.5, the substantial benefit doctrine and/or the common fund
13 doctrine.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

16 **(By Plaintiff and the Machine Operators Class against Defendants)**

17 23. Plaintiff incorporates paragraphs 1 through 16 of this complaint as if fully alleged
18 herein.

19 24. At all relevant times, Plaintiff and the other members of the Machine Operators Class
20 were employees of Defendant covered by Labor Code Section 1197.

21 25. Pursuant to Labor Code Section 1197, Plaintiff and the other members of the Machine
22 Operators Class were entitled to minimum wages for every hour they worked and/or every hour
23 deemed compensable "hours worked" by virtue of being subject to the direction and/or control of
24 Defendant.

25 26. Defendant failed to pay Plaintiff and other members of the Machine Operators Class all
26 the minimum wages owed to them for every hour worked or deemed compensable "hours worked" in
27 accordance with Labor Code Section 1197. Plaintiff is informed and believes and thereon alleges that,
28 during the limitations period applicable to this cause of action, Defendant had a policy or practice of

1 failing to pay Plaintiff and other members of the Machine Operators Class wages for: a) meal period
2 time that constituted compensable hours worked because meal periods were not duty free for 30
3 minutes; and/or b) all the time worked at the start of shifts since 2023 prior to when Harvest Workers
4 began their work in the field.

5 27. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
6 Machine Operators Class have suffered damages in an amount, subject to proof, to the extent they were
7 not paid all the minimum wages owed to them.

8 28. Pursuant to Labor Code Section 1194, Plaintiff and the other members of the Machine
9 Operators Class are entitled to recover the full amount of their unpaid minimum wages, interest
10 thereon, reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 1194.2, Plaintiff
11 and other members of the Machine Operators Class are also entitled to recover liquidated damages in
12 an amount equal to the amount of unpaid minimum wages and interest thereon.

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PAY OVERTIME WAGES**

15 **(By Plaintiff and the Overtime Class against Defendants)**

16 29. Plaintiff incorporates paragraphs 1 through 16 and 23 through 28 of this complaint as if
17 fully alleged herein.

18 30. At all relevant times, Plaintiff and the other members of the Overtime Class were
19 employees of Defendant covered by Labor Code Sections 860-862 and/or Wage Order 14.

20 31. Pursuant to Labor Code Sections 860-862 and/or Wage Order 14, Plaintiff and the other
21 members of the Overtime Class were entitled to overtime wages at the rate of 1 and ½ times their regular
22 rate of pay for every hour of overtime worked or deemed compensable "hours worked," including
23 overtime hours worked in excess of daily limits, overtime hours worked in excess of weekly limits, and
24 overtime hours worked on a seventh consecutive day of a workweek.

25 32. Defendant failed to pay Plaintiff and other members of the Overtime Class all the
26 overtime wages owed to them. Plaintiff is informed and believes and thereon allege that, during the
27 limitations period applicable to this cause of action, Defendant had a policy or practice of not paying
28 Machine Operators overtime wages owed for: a) meal period time that constituted compensable hours

1 worked because meal periods were not duty free for 30 minutes; and/or b) all the time worked at the
2 start of shifts since 2023 prior to when Harvest Workers began their work in the field.

3 33. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
4 Overtime Class have suffered damages in an amount, subject to proof, to the extent they were not paid
5 all the overtime wages owed to them.

6 34. Pursuant to Labor Code Section 1194, Plaintiff and the other members of the Overtime
7 Class are entitled to recover the full amount of their unpaid overtime wages, interest thereon,
8 reasonable attorney's fees and costs of suit.

9 **FIFTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **(By Plaintiff and the Restitution Class against Defendants)**

12 35. Plaintiff incorporates paragraphs 1 through 34 of this complaint as if fully alleged
13 herein.

14 36. The unlawful conduct of Defendant alleged herein constitutes unfair competition within
15 the meaning of Business and Professions Code Section 17200.

16 37. As a result of Defendant's unfair competition as alleged herein, Plaintiff and other
17 members of the Restitution Class have suffered injury in fact and lost money or property. Plaintiff and
18 members of the Restitution Class have been deprived of their rights to be provided meal periods in
19 accordance with the law, to be provided rest periods in accordance with the law, and to be paid all the
20 premium wages, minimum wages, and overtime wages owed to them; and Plaintiff and other members
21 of the Restitution Class have not been paid all the monies owed to them under California law.

22 38. Pursuant to Business and Professions Code Section 17203, Plaintiff and other members
23 of the Restitution Class are entitled to restitution of all wages or other monies owed to them under
24 California law (including interest thereon), in which they had a property interest, which Defendant
25 failed to pay to them. Restitution of the money owed to Plaintiff and other members of the Restitution
26 Class that Defendant wrongfully withheld and retained by means of engaging in unlawful business
27 practices in violation of California law is necessary to prevent Defendant from becoming unjustly
28 enriched by its failure to comply with California law.

1 39. Plaintiff and members of the Restitution Class are entitled to recover reasonable
2 attorney's fees in connection with their unfair competition claims pursuant to Code of Civil Procedure
3 Section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

6 **(By Plaintiffs and the Wage Statement Class against Defendants)**

7 40. Plaintiff incorporates paragraphs 1 through 39 of this complaint as if fully alleged
8 herein.

9 41. At all relevant times, Plaintiff and the other members of the Wage Statement Class
10 were employees of Defendant covered by Labor Code Section 226.

11 42. Pursuant to Labor Code Section 226(a), Plaintiff and the other members of the
12 Wage Statement Class were entitled to receive, semimonthly or at the time of each payment of
13 wages, an accurate itemized wage statement showing, *inter alia*, the total amount of gross wages
14 earned during the pay period, the total amount of net wages earned during the pay period, and the
15 total number of hours worked during the pay period.

16 43. Defendant failed to provide Plaintiff and other members of the Wage Statement
17 Class accurate or legally compliant itemized statements in accordance with Labor Code Sections
18 226(a). Plaintiff is informed and believes and thereon alleges that, during the limitations period
19 applicable to this cause of action, Defendant had a policy or practice of failing to pay Machine
20 Operators premium wages for meal period violations and rest period violations and failing to pay
21 Machine Operators all the minimum wages and/or overtime wages to them, which and resulted
22 in Defendant providing Machine Operators with wage statements that, in violation of Labor
23 Code Section 226(a), did not state the total amount of gross wages earned during the pay period,
24 the total amount of net wages earned during the pay period and/or, the total number of hours
25 worked during the pay period.

26 44. Defendant's failure to provide Plaintiff and other members of the Wage Statement
27 Class with accurate wage statements was knowing and intentional. Defendant had the ability to
28 provide Plaintiff and other members of the Wage Statement Class with accurate wage statements

1 but intentionally provided wage statements that Defendant knew did not comply with all the
2 requirements of Labor Code Section 226(a). Defendant intended and knew that, during the
3 limitations period applicable to this cause of action, Defendant had a policy or practice of failing
4 to pay Machine Operators premium wages for meal period violations and rest period violations
5 and failing to pay Machine Operators all the minimum wages and/or overtime wages to them;
6 and Defendant intended and knew that wage statements provided to Machine Operators, in
7 violation of Labor Code Section 226(a), did not state the total amount of gross wages earned
8 during the pay period, the total amount of net wages earned during the pay period and/or the total
9 number of hours worked during the pay period.

10 45. As a result of Defendant's conduct, Plaintiff and other members of the Wage Statement
11 Class have suffered injury. From the wage statements provided to them alone, Plaintiff and other
12 members of the Wage Statement Class could not promptly and easily determine the total amount of
13 gross wages actually earned, the total amount of net wages actually earned and/or the total number of
14 hours worked during the pay period.

15 46. Pursuant to Labor Code Sections 226(e) Plaintiff and other members of the Wage
16 Statement Class are entitled to recover fifty dollars for the initial pay period in which a violation of
17 Labor Code Section 226(a) occurred and one hundred dollars for each violation of Labor Code Section
18 226(a) in every subsequent pay period, not to exceed an aggregate civil penalty of four thousand
19 dollars per employee.

20 47. Pursuant to Labor Code Sections 218, 226(e) and 226(g), Plaintiff and other members of
21 the Wage Statement Class are entitled to recover the full amount of civil penalties due under Labor
22 Code Section 226(e), reasonable attorney's fees and costs of suit.

23 **SEVENTH CAUSE OF ACTION**

24 **FAILURE TO PAY ALL WAGES UPON TERMINATION**

25 **(By Plaintiff and the Final Wages Class against Defendants)**

26 48. Plaintiff incorporates paragraphs 1 through 34 of this complaint as if fully alleged
27 herein.

28 49. At all relevant times, Plaintiff and the other members of the Final Wages Class were

1 employees of Defendant covered by Labor Code Sections 201 or 202.

2 50. Pursuant to Labor Code Sections 201 or 202, Plaintiff and other members of the Final
3 Wages Class were entitled upon termination (including layoff at end of seasonal employment) to timely
4 payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to
5 payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees
6 who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72
7 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to
8 payment of all wages earned and unpaid prior to resignation at the time of resignation.

9 51. Defendant failed to pay Plaintiff and other members of the Final Wages Class all wages
10 earned and unpaid prior to termination in accordance with Labor Code Sections 201 or 202. Plaintiff is
11 informed and believes and thereon alleges that, during the limitations period applicable to this cause of
12 action, Defendant had a policy or practice of failing to pay Machine Operators premium wages for
13 meal period violations and rest period violations and failing to pay Machine Operators all the
14 minimum wages and/or overtime wages to them, which resulted in Defendant failing to pay Machine
15 Operators all the wages owed to them upon termination.

16 52. Defendant's failure to pay Plaintiff and members of the Final Wages Class all wages
17 earned prior to termination in accordance with Labor Code Sections 201 or 202 was willful.
18 Defendant had the ability to pay all wages earned by members of the Final Wages Class prior to
19 termination in accordance with Labor Code Sections 201 or 202, but intentionally adopted policies or
20 practices incompatible with the requirements of Labor Code Sections 201 or 202. Defendant intended
21 and knew that, during the limitations period applicable to this cause of action, Defendant had a policy
22 or practice of failing to pay Machine Operators premium wages for meal period violations and rest
23 period violations and failing to pay Machine Operators all the minimum wages and/or overtime wages
24 to them; and Defendant intended and knew that Machine Operators, in violation of Labor Code Section
25 201 or 202, were not being paid all the wages owed to them upon termination.

26 53. Pursuant to Labor Code Sections 201 or 202, Plaintiff and other members of the Final
27 Wages Class are entitled to all wages earned prior to termination that Defendant failed to pay them.

28 54. Pursuant to Labor Code Section 203, Plaintiff and other members of the Final Wages

Class are entitled to penalty wages, from the day their earned and unpaid wages were due upon termination until paid, up to a maximum of 30 days of penalty wages.

55. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Final Wages Class have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages earned prior to termination.

56. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Final Wages Class have suffered damages in an amount, subject to proof, to the extent they were not paid all penalty wages owed under Labor Code Section 203.

57. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other members of the Final Wages Class are entitled to recover the full amount of their unpaid wages, penalty wages under Labor Code Section 203, reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other members of the Final Wages Class are entitled to recover prejudgment interest on the amount of their unpaid wages and unpaid penalty wages.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES UNDER PAGA

(By Plaintiff and Aggrieved Employees against Defendants)

58. Plaintiff incorporates paragraphs 1 through 57 of this complaint as if fully alleged herein.

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

60. Plaintiff brings his claims for civil penalties under PAGA on behalf of "Aggrieved Employees" defined as follows: "All persons who, at any time since May 17, 2023, worked for Defendant in California as hourly paid non-exempt agricultural employees who operated harvest machinery or tractors in the field as part of a harvest crew."

61. Plaintiff has complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By letter dated May 17, 2024, Plaintiff gave written notice to the LWDA (by electronic submission) and to Defendant (by certified mail) of Plaintiff's allegations against Defendant.

1 A true and correct copy of this notice letter is attached as Exhibit 1. As set forth therein, Plaintiff
2 alleges that Defendant violated Labor Code Sections 201, 202, 204, 226, 226.7, 512, 860-862, 1197
3 and 1198.

4 62. Because the LWDA did not give Plaintiff any notice within 65 days of the postmark
5 date of his May 17, 2024 notice letter to the LWDA that the LWDA either intended or did not intend to
6 investigate any of his allegations, Plaintiff may now pursue a civil action for civil penalties under
7 PAGA pursuant to Labor Code Section 2699.3.

8 63. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved
9 Employees are entitled to recover civil penalties for Defendant's violations of the Labor Code in the
10 following amounts:

11 a. For violation of Labor Code Sections 201, 202, 204, 226, 226.7, 860-862, 1197 and
12 1198, the amount of one hundred dollars (\$100) for each employee per pay period for the initial
13 violation and two hundred dollars (\$200) for each employee per pay period for each subsequent
14 violation [penalty amount per Labor Code Section 2699(f)(2)].

15 b. For violation of Labor Code Sections 512, fifty dollars (\$50) for each employee for
16 each pay period and for each subsequent violation, one hundred dollars (\$100) for each employee for
17 each pay period [penalty amount per Labor Code Section 558].

18 64. Pursuant to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be
19 distributed to the LWDA, and 25% shall be distributed to the Aggrieved Employees.

20 65. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of reasonable
21 attorney's fees and costs in connection with her claims for civil penalties.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for relief
24 and judgment against Defendants as follows:

25 A. An order certifying that Plaintiff may pursue his claims as a class action under Section
26 382 of the Code of Civil Procedure.

27 B. An order appointing Plaintiff as the Class representative and appointing Plaintiff's
28 counsel as counsel for the Class.

- 1 C. Damages for unpaid premium wages for meal period violations under Labor Code
2 Section 226.7.
- 3 D. Damages for unpaid premium wages for rest period violations under Labor Code
4 Section 226.7.
- 5 E. Damages for unpaid minimum wages under Labor Code Section 1197.
- 6 F. Damages for unpaid overtime wages under Labor Code Section 1194.
- 7 G. Restitution for unpaid monies owed under Business and Professions Code Section
8 17203.
- 9 H. Civil penalties for inaccurate wage statements under Labor Code Section 226.
- 10 I. Damages for unpaid wages under Labor Code Section 201 and/or Labor Code Section
11 202.
- 12 J. Damages for unpaid penalty wages under Labor Code Section 203.
- 13 K. Civil penalties under Labor Code Section 2699.
- 14 L. Pre-judgment interest.
- 15 M. Costs.
- 16 N. Reasonable attorney's fees.
- 17 O. Such other and further relief as the Court deems just and proper.

18 Dated: July 22, 2024

KARASIK LAW FIRM
LAW OFFICES OF SANTOS GOMEZ

19
20 By

s/ Gregory N. Karasik
Gregory N. Karasik
Attorneys for Plaintiff

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff demands a trial by jury for himself and all others similarly situated on all claims so
23 triable.

24 Dated: July 22, 2024

KARASIK LAW FIRM
LAW OFFICES OF SANTOS GOMEZ

25
26 By

s/ Gregory N. Karasik
Gregory N. Karasik
Attorneys for Plaintiff

EXHIBIT 1

KARASIK LAW FIRM

16021 Aiglon St.
Pacific Palisades, CA 90272
Tel. (310) 463-9761
greg@karasiklawfirm.com

May 17, 2024

Labor and Workforce Development Agency
Department of Industrial Relations
Online Filing

Re: California Labor Code §2699 Letter

Aggrieved Employee: Alejo Dominguez
Employer: Foothill Packing, Inc.

This letter shall serve as notice under Labor Code Section 2699.3 that Alejo Dominguez alleges that his employer Foothill Packing, Inc. ("Foothill Packing") has a practice of violating the Labor Code with respect to non-exempt hourly paid agricultural employees who operate harvest machinery or tractors in the field as part of a harvest crew ("Machine Operators"). Mr. Alejo has worked for Foothill Packing in Monterey County, California as a Machine Operator on a seasonal basis since 2019. Mr. Dominguez alleges, on behalf of himself and other Machine Operators, that Foothill Packing violates the Labor Code in the following ways:

1. For three reasons, Foothill Packing does not provide Machine Operators with meal periods in accordance with Labor Code Section 512.

a. First, Machine Operators are not provided with a timely first meal period. Machine Operators begin work before the members of the harvesting crew who perform harvesting work ("Harvest Workers"). Prior to 2023, Machine Operators started work 2 hours before Harvest Workers. Since 2023 Machine Operators start work at least 1.75 hours before Harvest Workers. Because Foothill Packing provides meal periods to Machine Operators at the same time meal periods are provided to Harvest Workers, but Machine Operators start work 1.75 – 2 hours before Harvest Workers, Machine Operators are not provided a meal period before the start of the 6th hour of work on a workday.

b. Second, Foothill Packing does not provide Machine Operators with meal periods that are duty free for 30 minutes. During the 30 minute meal period provided to Machine Operators, it takes them several minutes at the start of the meal period to turn off their machines and wait for Harvest Workers to walk from the field to the meal area and doff their protective clothing and equipment before Machine Operators can start walking from the field to the meal area; and it takes Machine Operators several minutes at the end of the meal period to walk from the meal area to the field, wait for Harvest Workers to don their protective clothing equipment and walk from the meal area to the field, and turn on their machines.

c. Third, Foothill Packing does not provide Machine Operators with a second meal period when they work more than 10 hours in a workday.

2. For three reasons, Foothill Packing does not provide Machine Operators with rest periods in accordance with Wage Order 14, which constitutes a violation of Labor Code Section 1198.

a. First, the first rest period provided to Machine Operators is not timely because Machine Operators start work 1.75 – 2 hours before Harvest Workers but Machine Operators and Harvest Workers are provided a first rest period at the same time.

b. Second, Foothill Packing does not provide Machine Operators a second period when Harvest Workers work more than 6 hours but fewer than 7 hours in a workday. Thus, Machine Operators were not provided a second rest period when they worked more than 6 hours but fewer than 9 hours in a workday prior to 2023, and Machine Operators were not provided a second rest period when they worked more than 6 hours but fewer than 8.75 hours in a workday since 2023.

c. Third, Foothill Packing does not provide Machine Operators with a third rest period when they work more than 10 hours in a workday.

3. In violation of Labor Code Section 226.7, Foothill Packing does not pay Machine Operators premium wages owed to them for any of the meal period violations or rest period violations described above.

4. In violation of Labor Code Section 1197, Foothill Packing does pay not Machine Operators all the minimum wages owed to them for two reasons.

a. First, since 2023 Foothill Packing has only paid Machine Operators wages for 1.5 hours at the start of their shifts before Harvest Workers begin their work, even though it takes Machine Operators at least 1.75 hours to perform all the work they need to do before Harvest Workers begin.

b. Second, Foothill Packing does not pay Machine Operators minimum wages for their meal period time, the entirety of which constitutes compensable “hours worked” because, for the reasons explained above, meal periods are not duty free for 30 minutes.

5. In violation of Labor Code Section 860-862, and/or in violation of Labor Code Section 1198 for not complying with Wage Order 14, Foothill Packing does pay not Machine Operators who work overtime hours all the overtime wages owed to them for two reasons:

a. First, since 2023 Foothill Packing has only paid Machine Operators wages for 1.5 hours at the start of their shifts before Harvest Workers begin their work, even though it takes Machine Operators at least 1.75 hours to perform all the work they need to do before Harvest Workers begin.

b. Second, Foothill Packing does not pay Machine Operators minimum wages for their meal period time, the entirety of which constitutes compensable "hours worked" because, for the reasons explained above, meal periods are not duty free for 30 minutes.

6. In violation of Labor Code Section 226, Foothill Packing does not provide Machine Operators with accurate wage statements. The wage statements provided to Machine Operators do not state the total amount of gross wages earned during the pay period, the total amount of net wages earned during the pay period and/or the total number of hours worked during the pay period because, for the reasons explained above, Foothill Packing does not pay Machine Operators all the premium wages owed to them for meal period violations and rest period violations, and Foothill Packing does not pay Machine Operators all the minimum wages and/or overtime wages owed to them.

7. In violation of Labor Code Section 204, Foothill Packing does not pay Machine Operators all the wages owed to them every pay period because, for the reasons explained above, Foothill Packing does not pay Machine Operators all the premium wages owed to them for meal period violations and rest period violations, and Foothill Packing does not pay Machine Operators all the minimum wages and/or overtime wages owed to them.

8. In violation of Labor Code Sections 201 and/or 202, Foothill Packing does not pay Machine Operators whose employment ends (whether by discharge, resignation or seasonal layoff) all the wages owed to them upon termination of employment because, for the reasons explained above, Foothill Packing does not pay Machine Operators all the premium wages owed to them for meal period violations and rest period violations, and Foothill Packing does not pay Machine Operators all the minimum wages and/or overtime wages owed to them.

9. In violation of Labor Code Section 1198, Foothill Packing since 2023 has not kept records of when the work periods of Machine Operators begin. As explained above, since 2023 Machine Operators have been required to begin work at least 15 minutes earlier than their scheduled starting time.

Please advise whether the LWDA intends to investigate these allegations. If we do not receive a timely notice that the LWDA intends to do so, Mr. Dominguez will proceed to seek civil penalties against Foothill Packing under Labor Code Section 2699 in a civil lawsuit.

Very truly yours,

KARASIK LAW FIRM

s/ Gregory N. Karasik
Gregory N. Karasik

cc: Foothill Packing, Inc.
1582 Moffett Street, Suite G
Salinas, CA 93902

Via Certified Mail