

CIVIL COVER SHEET

JS 44 (Rev. 12/12)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Rafael Marquez Amaro, Jesus Alarcon Urzua, on behalf of themselves and others similarly situated,

DEFENDANTS
 GERAWAN FARMING, INC., a California Corporation; GERAWAN FARMING PARTNES, INC., a California Corporation; Does 1-10, Inclusive

(b) County of Residence of First Listed Plaintiff Fresno
 (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Fresno
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Marcos Camacho, ALC, Marcos Camacho -1227 California Ave., Bakersfield, CA 93304 - (661) 324-8100 - Kingsley & Kingsley, APC
 Eric Kingsley, 16133 Ventura Bl., Ste. 1200, Encino, CA 91436

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify)

6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. Section 1331, 29 U.S.C. Section 1854 and 28 U.S.C. Section 1367.

Brief description of cause:
 Violation of Federal and State wage and hour laws

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 02/03/2014

SIGNATURE OF ATTORNEY OF RECORD:

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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17 **Attorneys for Plaintiffs**

18
19 **UNITED STATES DISTRICT COURT**
20 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
21

22 **Rafael Marquez Amaro, Jesus Alarcon**
23 **Urzua, on behalf of themselves and**
24 **others similarly situated,**

25 **Plaintiffs,**

26 **v.**

27 **GERAWAN FARMING, INC., a**
28 **California Corporation; GERAWAN**
29 **FARMING PARTNERS, INC., a**
30 **California Corporation; DOES 1 - 10,**
31 **inclusive,**

32 **Defendants.**

CASE NO.

CLASS ACTION COMPLAINT
FOR:

1. Violation of Migrant and Seasonal Agricultural Worker Protection Act
2. Failure to Pay Minimum Wages
3. Failure to Pay Wages and Overtime
4. Failure to Compensate Rest Breaks
5. Penalties Pursuant to Lab. Code § 203
6. Violation of Business & Professions Code § 17200

1 Plaintiffs Rafael Marquez Amaro and Jesus Alarcon Urzua for themselves and
2 all other persons similarly situated (“Plaintiffs”), complain of Defendants
3 GERAWAN FARMING, INC., and GERAWAN FARMING PARTNERS,
4 INC.(hereinafter "GERAWAN" or “Defendants”) as follows:
5

6
7 **INTRODUCTION**

8 1. This is a class action by current and former employees of GERAWAN
9 for recovery of unpaid wages and penalties, unpaid overtime and wages, failure to
10 provide paid rest breaks, restitution, attorneys' fees and costs, and injunctive relief.
11

12 2. Defendants are engaged jointly in the business of growing table grapes
13 and other agricultural commodities, on land located primarily in Fresno, Madera
14 and Tulare Counties, California.
15

16 3. The Named Plaintiffs are seasonal farm workers who have worked in
17 Defendants’ table grape fields and/or tree fruit orchards. On behalf of themselves
18 and the class, Plaintiffs complain that GERAWAN has required its agricultural
19 workers to perform unpaid and/or undercompensated work in violation of federal
20 and state wage and hour laws.
21
22

23 **JURISDICTION AND VENUE**

24 4. The Court has jurisdiction over Plaintiffs' federal claims pursuant to 28
25 U.S.C. §1331 and 29 U.S.C. §1854. The Court has supplemental jurisdiction over
26 Plaintiffs' state law claims pursuant to 28 U.S.C. §1367.
27
28

1 5. Venue is proper in this district pursuant to 28 U.S.C. §1891(d) because
2 the actions at issue took place in this district.

3
4 **INTRADISTRICT ASSIGNMENT**

5 6. This case is properly assigned to the Fresno Division of this Court
6 because the action arose in Fresno, California and Defendants' offices are located in
7 Fresno, California. (See Local Rule 3-120(d).)

8
9 **PARTIES**

10 7. Named plaintiffs Rafael Marquez Amaro and Jesus Alarcon Urzua are
11 residents of Fresno County, California. Plaintiffs are or were agricultural workers,
12 within the meaning of 29 U.S.C. §1802(10), and are or were employed at
13 GERAWAN, within the meaning of 29 U.S.C. §1802(3), to work in Defendants'
14 agricultural fields in or near Fresno, Madera and Tulare counties in California at
15 various times from four (4) years prior to the filing of this action to the present ("the
16 relevant period").
17
18

19
20 8. Plaintiff Rafael Marquez Amaro has worked for Defendants as a field
21 worker since in or around October, 2011. Each year thereafter during the relevant
22 period, GERAWAN hired him at the beginning of the pruning season, around
23 December, and laid him off at the end of the grape harvest season, around
24 November. GERAWAN also laid him off and rehired him, from time to time,
25 between the various table grape seasons (e.g., pruning, tying, and harvesting), and
26 between the tree fruit harvest seasons.
27
28

1 9. Plaintiff Jesus Alarcon Urzua has worked for Defendants as a field
2 worker since in or around April, 2012. During the relevant period, GERAWAN
3 hired him at the beginning of the thinning season, around April, and laid him off at
4 the end of the grape harvest season, around November. GERAWAN also laid him
5 off and rehired him, from time to time, between the various table grape seasons
6
7 (e.g., pruning, tying, and harvesting) and during the tree fruit seasons.
8

9 10. Defendant GERAWAN FARMING, INC. is a California Corporation
10 that maintains its executive office in Fresno County, California. Defendant
11 GERAWAN FARMING PARTNERS, INC. is a California Corporation that
12 maintains its executive office in Fresno County, California, at the same address
13 used by Defendant GERAWAN FARMING, INC. Defendants employ field
14 workers and other employees to work in Defendants' agricultural fields in or near
15 Fresno, Madera, and Tulare counties in California.
16
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18 11. Plaintiffs are ignorant of the true name, capacity, relationship and
19 extent of participation in the conduct herein alleged of the Defendants sued herein
20 as DOES 1 through 10, but are informed and believe and thereon allege that said
21 Defendants are legally responsible for the wrongful conduct alleged herein and
22 therefore sue these Defendants by such fictitious names. Plaintiffs will amend this
23 complaint to allege their true names and capacities when ascertained.
24
25

26 12. Plaintiffs are informed and believe and thereon allege that each
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1 Defendant acted in all respects pertinent to this action as the agent of the other
2 Defendants, and/or carried out a joint scheme, business plan or policy in all respects
3 pertinent hereto, and/or the acts of each Defendant are legally attributable to the
4 other Defendants.
5

6 **FACTUAL BACKGROUND**
7

8 13. Plaintiffs and the Class are, and at all times pertinent hereto, have been
9 non-exempt employees within the meaning of the California Labor Code, and the
10 implementing rules and regulations of the IWC California Wage Orders.
11

12 14. During the relevant period, GERAWAN has cultivated, harvested,
13 packed, and shipped agricultural commodities including table grapes and tree fruit
14 on agricultural land located in or near Fresno, Madera, and Tulare Counties,
15 California, for fresh market sale. GERAWAN sells and ships its agricultural
16 produce to various parts of California and other states of the United States.
17

18 15. During the relevant period GERAWAN has employed, as that term is
19 used in 29 U.S.C. §1892(3), thousands of seasonal agricultural workers in its
20 pruning, tying, thinning, harvesting, and field packing and packaging operations.
21

22 16. During the relevant period, many of Defendants' field workers have
23 quit their employment, or been laid off, during or between the various table grape
24 and tree fruit seasons.
25

26 17. During the relevant class period, Named Plaintiffs and the class they
27
28

1 represent have engaged in agricultural employment, as that term is used in 29
2 U.S.C. §1802(3), on agricultural land owned or operated by Defendants.
3

4 18. During the relevant period, Plaintiffs and the Class they represent have
5 entered into working arrangements with Defendants. These arrangements are
6 formed and entered into each season, at or near the time each of the Named
7 Plaintiffs and other workers are hired by Defendants.
8

9 19. Under the working arrangements, which are also oral employment
10 contracts, Defendants offered Plaintiffs and other agricultural workers jobs in their
11 agricultural operations, and Plaintiffs and other agricultural workers accepted the
12 job offers. By words, conduct, practice, or custom and usage, it is understood by
13 the Defendants and the workers that Defendants will pay the workers an hourly rate
14 for certain services performed and a piece rate based on production for other
15 services. In addition, by words, conduct, practice, or custom and usage, including
16 but not limited to posting the applicable California IWC Wage Order at the place of
17 employment, Defendants communicated to employees that they would follow
18 California's wage order and laws.
19
20
21

22 20. Said contracts are and were working arrangements as that term is used
23 in the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.
24 §1932(c). Said contracts required Defendants to pay Plaintiffs and the Class their
25 agreed-upon wages for all hours worked or pieces performed.
26
27

28 21. During the relevant period, Defendants have failed to pay all wages due

1 to Plaintiff and the Class. Specifically, Defendants have failed to pay their field
2 workers in the table grape operations, and other operations, the proper minimum
3 wages, failed to pay all wages due, and failed to pay overtime compensation when
4 paid in whole or part by piece rate.
5

6 22. During the relevant period, Plaintiffs and the Class worked over ten
7 (10) hours per day, but were not paid overtime for piece rate work at premium rates.
8

9 23. During the relevant period, Plaintiffs and the Class worked over three
10 and ½ hours per day and were not provided paid rest breaks when paid by the piece.
11

12 24. Plaintiffs and the members of the Class were at times paid sub-
13 minimum wage when paid by piece rate.
14

15 25. Plaintiffs and the members of the Class were not paid all wages due
16 when paid by piece rate.
17

18 26. The failure to pay this compensation was knowing and willful and is
19 apparent from reviewing the pay stubs provided by Defendants.
20

21 27. Plaintiffs and the Class are covered by California Industrial Welfare
22 Commission Occupational Wage Order No. 14-2001, California Industrial Welfare
23 Commission in No. 14 (Title 8 Cal. Code of Reg. §§11140).
24

25 CLASS ACTION ALLEGATIONS

26 28. Plaintiffs bring this action on behalf of themselves and all others
27 similarly situated as a Class Action pursuant to Rule 23(a) and 23(b)(3) of the
28 F.R.C.P. Plaintiffs satisfy the requirements of Rule 23(a) and (b)(3) for the

1 prosecution of this action as a class action. Plaintiffs seek to represent a Class
2 composed of and defined as follows:

3
4 All persons who are employed or have been employed by
5 GERAWAN, and who have worked one or more shifts as
6 a non-exempt hourly field worker and paid by piece rate
7 in the State of California since four (4) years prior to the
8 filing of this action.

9 29. Plaintiffs reserve the right to amend or modify the Class description
10 with greater specificity or further division into subclasses or limitation to particular
11 issues.

12 **A. Numerosity**

13 30. The potential members of the Class as defined are so numerous that
14 joinder of all the members of the Class is impracticable. While the precise number
15 of Class Members has not been determined at this time, Plaintiffs are informed and
16 believe that Defendants, during the relevant period, employed over 10,000
17 agricultural workers.
18

19
20 31. Plaintiffs allege that Defendants' employment records would provide
21 information as to the number and location of all Class Members. Joinder of all
22 members of the proposed Class is not practicable.
23

24 **B. Commonality**

25 32. There are questions of law and fact common to the Class that
26 predominate over any questions affecting only individual Class Members. These
27 common questions of law and fact include, without limitation:
28

1 (a) Whether Defendants violated the Migrant and Seasonal
2 Agricultural Worker Protection Act, 29 U.S.C. §1801 et seq. (“AWPA”) by
3 failing to pay proper wages due to class members for all hours worked.
4

5 (b) Whether Defendants accurately paid minimum wages for all
6 hours worked;
7

8 (c) Whether Defendants accurately paid all wages due for all hours
9 worked;
10

11 (d) Whether Defendants failed to pay overtime compensation for all
12 hours worked;
13

14 (e) Whether Defendants violated Labor Code §226.7, Wage Order
15 14-2001 or other IWC Wage Orders by failing to provide paid, duty free rest
16 periods for every four (4) hours or major fraction thereof worked or failing to
17 compensate said employees one (1) hours wages in lieu of rest periods;
18

19 (f) Whether Defendants violated §§201-203 of the Labor Code by
20 failing to pay compensation due and owing at the time that any Class member's
21 employment with Defendants terminated;
22

23 (g) Whether Defendants violated §17200 et seq. of the Business &
24 Professions Code by engaging in the acts previously alleged; and
25

26 (h) Whether Plaintiffs and the members of the Class are entitled to
27 equitable relief pursuant to Business & Professions Code §17200, et. seq.
28

1 **C. Typicality**

2 33. The claims of the Named Plaintiffs are typical of the claims of the
3
4 Class.

5 34. Plaintiffs are members of the Class. Plaintiffs are currently, or were
6 formerly employed by Defendants and were subjected to the same unlawful
7 practices as other field workers. Plaintiffs and other members of the Class suffered
8 the same injuries and seek the same relief

9
10 **D. Adequacy of Representation**

11 35. Plaintiffs will fairly and adequately represent and protect the interests
12 of the members of the Class. Counsel for Plaintiffs are competent and experienced
13 in litigating large employment class actions.

14
15 **E. Predominance and Superiority of Class Action**

16 36. A class action is superior to other available means for the fair and
17 efficient adjudication of this controversy. Individual joinder of all Class Members
18 is not practicable, and questions of law and fact common to the Class predominate
19 over any questions affecting only individual members of the Class.

20 37. Class action treatment will allow those similarly situated persons to
21 litigate their claims in the manner that is most efficient and economical for the
22 parties and the judicial system. Plaintiffs are unaware of any difficulties that are
23 likely to be encountered in the management of this action that would preclude its
24 maintenance as a class action.
25
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1 (b) failing to post a notice setting forth the rights and protections
2 provided by the Act, as required by 29 U.S.C. §1831(b); and

3
4 (c) violating the terms of the working arrangements made with
5 Plaintiffs and the Class, in violation of 29 U.S.C. §1832(c).

6 **SECOND CAUSE OF ACTION**

7
8 **FAILURE TO PAY OVERTIME AND ALL WAGES DUE PURSUANT TO**

9 **THE CALIFORNIA LABOR CODE**

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

12
13 42. By their policy of requiring non-exempt employees to work in excess of
14 ten (10) hours in a workday and/or sixty (60) hours in a workweek without
15 compensating such employee at a rate of (1 1/2) their regular rate as alleged,
16 Defendants have violated the California Labor Code.

17
18 43. Labor Code §1194 establishes an employee's right to recover unpaid
19 wages, including overtime compensation and interest thereon, together with the
20 costs of suit. Cal. Lab. Code §1198 further states that the employment of an
21 employee for longer hours than those fixed by the Industrial Welfare Commission
22 is unlawful.
23

24
25 44. As a result of the unlawful acts of Defendants, Plaintiffs and the Class
26 have been deprived of wages and overtime in amounts to be determined at trial, and
27
28

1 are entitled to recovery of such amounts, plus interest and penalties, attorneys' fees,
2 and costs, pursuant to Labor Code § 1194.

3
4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

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

9 46. Labor Code § 1194 requires an employer to pay the unpaid balance of
10 any minimum wage that was not paid to an employee. Employees are entitled to
11 minimum wages for each hour of work.

13 47. Defendants failed to provide Plaintiffs and the Class with minimum
14 wage compensation by failing to pay them properly for all hours worked. This
15 happened when Plaintiffs earned a total compensation of less than \$8.00 an hour for
16 each and every hour worked in a specific day when they were paid in whole or part
17 by piece.

19 48. Pursuant to the California Labor Code, Plaintiffs are entitled to recover
20 all wages due for all hours that were not compensated at the minimum wage rate, in
21 a sum to be proven at trial, plus liquidated damages in the same amount.

23 49. Pursuant to California Labor Code § 1194.2, Plaintiffs request that the
24 court award interest, reasonable attorney's fees, and costs incurred in this action.
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FOURTH CAUSE OF ACTION

FAILURE TO COMPENSATE FOR REST BREAKS PURSUANT TO

LABOR CODE §226.7 AND WAGE ORDER 14-2001

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

51. Labor Code §226.7 and IWC Wage Order 14-2001 require an employer to provide paid rest periods or to pay an additional hour (1) of compensation for each paid rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked or major fraction thereof.

52. Plaintiffs and the Class consistently worked over 3 ½ hours without being provided with paid rest breaks while working on a piece rate basis during the relevant period.

53. Pursuant to Labor Code §226.7, Plaintiffs are entitled to damages in an amount equal to one (1) hour of wages per missed paid rest break in a sum to be proven at trial.

FIFTH CAUSE OF ACTION

PENALTIES PURSUANT TO CALIFORNIA LABOR CODE § 203

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

55. California Labor Code Section 203 provides, in relevant part:

1 If an employer willfully fails to pay, without abatement or
2 reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any
3 wages of an employee who is discharged or who quits, the wages of the
4 employee shall continue as a penalty from the due date thereof at the
5 same rate until paid or until an action therefore is commenced; but the
6 wages shall not continue for more than 30 days.
7

8
9 56. By willfully failing to pay wages due to Plaintiffs and the Class each
10 time they were discharged, laid off, or quit, in accordance with California Labor
11 Code §§201, 202, and 205.5, Defendants have violated California Labor Code
12 §203. The wages of Plaintiffs and the Class should thus continue as a penalty for
13 an additional 30 days.
14

15
16 **SIXTH CAUSE OF ACTION**

17 **VIOLATION OF THE BUSINESS & PROFESSIONS CODE § 17200**

18
19 57. Plaintiffs incorporate each and every allegation set forth in all of the
20 foregoing paragraphs as if fully set forth herein

21 58. California Business and Professions Code Section 17200 et seq.
22 provides, in relevant part, that "unfair competition shall mean and include any
23 unlawful, unfair, or fraudulent business act or practice..."
24

25 59. Plaintiffs bring this action on behalf of themselves and on behalf of the
26 Class described above, and on behalf of the general public pursuant to § 17204 of
27 the California Business & Professions Code.
28

1 60. In California, there is a fundamental and substantial public policy
2 protecting an employee's wages.

3
4 61. The following practices of Defendants are unlawful, and unfair
5 business practices under California Business & Professions Code § 17200 et seq.:

6 (a) underpaying workers, including Plaintiffs, in violation of the Migrant
7 and Seasonal Agricultural Workers Protection Act, 29 U.S.C. § 1832(c); California
8 Labor Code §§ 200, 205.5, 221, 223, 1194, 1197; the California Code of
9 Regulations Tit. 8, § 11140, IWC Wage Order 14; and fundamental public policy of
10 the State of California;
11

12 (b) failing to provide paid rest periods to workers, including Plaintiffs;

13 (c) retaining the benefit of the labor performed by workers, including
14 Plaintiffs, without reasonable compensation;
15

16 (d) failing to promptly pay all wages due to workers, including Plaintiffs,
17 when they were discharged, laid off or quit, in violation of the Migrant and
18 Seasonal Agricultural Workers Protection Act, 29 U.S.C. § 1832(c); and California
19 Labor Code §§ 201, 202 and 205.5; and
20

21 (e) paying workers, including Plaintiffs, less than the minimum wage, in
22 violation of AWPA, 29 U.S.C. § 1832(c); California Labor Code §1197 and IWC
23 Wage Order 14;
24

25 62. The unlawful, and unfair acts described herein present a continuing
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1 threat to the general public which cannot be adequately remedied at law. Plaintiffs
2 are informed and believe that such conduct will continue unless enjoined by this
3 Court pursuant to § 17203 of the Business and Professions Code.

4
5 63. The limitations period under the Business and Professions Code §
6 17208, is four years. Accordingly, Plaintiffs seek relief for the period going back
7 four years prior to the filing of this Complaint and continuing into the present until
8 judgment is entered.

9
10 **PRAYER FOR RELIEF**

11
12 WHEREFORE, Plaintiffs pray for judgment against Defendants, jointly and
13 severally, as follows:

14 1. Damages in an amount equal to all unpaid minimum wages, unpaid
15 wages, and overtime wages owed to Plaintiffs and the Class for three years prior to
16 the filing of this Complaint;

17
18 2. Restitution of Plaintiffs' and the Class's unpaid wages and overtime
19 under Business & Professions Code § 17200 et seq., for four years prior to the
20 filing of this Complaint;

21
22 3. Liquidated damages pursuant to California Labor Code §1194 for three
23 years prior to the filing of this Complaint;

24
25 4. Monetary damages to Plaintiffs and the Class, pursuant to the Migrant
26 and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1854(c), in an
27 amount equal to their actual damages or their statutory damages of up to \$500.00
28

1 per Class Member per violation, whichever is greater;

2 5. An award of statutory waiting-time penalties equal to 30-days' wages,
3 pursuant to California Labor Code § 203, to Plaintiffs and the Class, each time such
4 Class Member was discharged, quit, or laid off, including but not limited to each
5 time each employee was discharged because of an end-of-season layoff, in
6 accordance with California Labor Code Sections 201, 202 and 205.5 for three years
7 prior to the filing of the Complaint;
8

9
10 6. Monetary damages pursuant to paragraph 18 of California Code of
11 Regulations Tit. 8, Section 11140, IWC Wage Order 14;
12

13 7. A declaration that Defendants intentionally violated the Migrant and
14 Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1801 et seq.;

15
16 8. Injunctive relief, including an order enjoining Defendants from
17 continuing ongoing violations of the Migrant and Seasonal Agricultural Worker
18 Protection Act, and other injunctive relief as provided under California Business &
19 Professions Code §17200 et seq.;

20
21 9. Reasonable attorneys' fees and costs incurred by Plaintiffs on behalf of
22 themselves and the Class in the prosecution of this action pursuant to applicable
23 law, including without limitation, California Labor Code Section 218.5, 226, and
24 1194 and California Code of Civil Procedure Section 1021.5;

25
26 10. Pre- and post-judgment interest at the maximum legal rate of interest
27 for each item of damages listed above; and
28

1 11. Such other and further relief as this Court deems just and proper.

2 **DEMAND FOR JURY TRIAL**

3
4 Plaintiffs demand trial by jury.

5
6 DATED: February 3, 2014

KINGSLEY & KINGSLEY, APC

7
8 By: /s/ ERIC B. KINGSLEY
9 ERIC B. KINGSLEY
10 ATTORNEY FOR PLAINTIFFS