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14 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 RIGOBERTO SARMIENTO, and GUSTAVO)
LEUVANO-VACA others similarly situated,) CIVIL ACT. NO.: 5:20-cv-7974-BLF
17)
Plaintiff,)
18)
vs.)
19) SECOND AMENDED COMPLAINT
20)
FRESH HARVEST, INC., FRESH FOODS,) RULE 23 CLASS
INC., RAVA RANCHES, INC., and SMD)
21 LOGISTICS, INC.) JURY TRIAL DEMANDED
22)
23 Defendants.)
24)

25 1. Plaintiffs are truck drivers employed by Defendants to transport crops over public roads to
26 Defendants' clients packing sheds in the growing regions of California and Arizona. This Second
27 Amended Complaint filed with a proposed class resolution adds a PAGA count.
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1 2. Plaintiffs bring this amended complaint on their own behalf and on behalf of others similarly
2 situated to assert their rights to prevailing wages and equal pay under the terms of their employment
3 contracts, compliance with the terms of their working arrangements, pay for all hours worked
4 including California minimum wages and liquidated damages, overtime under California law,
5 reimbursement of necessary expenses, meal and rest break wage premiums, lawful, accurate and
6 complete paystubs, and waiting time penalties.

7 3. Plaintiff Sarmiento is a domestic worker who worked alongside foreign and domestic
8 workers employed by Defendants Fresh Harvest, Fresh Foods, Rava Ranches and SMD Logistics.
9 Plaintiff Leuvano-Vaca was an H-2A worker. Plaintiffs and others similarly situated were
10 employed subject to the terms of a written contract but Defendants routinely and flagrantly violated
11 the written contract and the H-2A program regulations upon which it was based. Defendants
12 violations caused Plaintiffs and others similarly situated economic harm, including substantial lost
13 wages, provided Defendants an unfair economic advantage over their competitors, and violated both
14 state and federal wage and employment laws.

15 4. Plaintiffs brings this action to vindicate their rights and those of others similarly situated,
16 recover their unpaid wages, interest and liquidated damages on behalf of themselves and a class of
17 workers similarly situated.

18 II. JURISDICTION AND VENUE

19 5. This Court has jurisdiction of this action pursuant to:

- 20 a. 28 U.S.C. § 1331 (Federal Question);
- 21 b. 29 U.S.C. § 1337 (Interstate Commerce);
- 22 c. 29 U.S.C. § 1854(a) (Agricultural Worker Protection Act); and
- 23 d. 28 U.S.C. § 1367 (Supplemental).

24 6. This Court has supplemental jurisdiction over the state law claims because they are so
25 related to Plaintiffs' federal claims that they form part of the same case or controversy under Article
26 III, Section 2 of the U.S. Constitution.

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1 7. **Intradistrict Assignment.** Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)
2 and N.D. Ca. Local Rule 3.2 because a substantial part of the claims arose in the Northern District
3 of California and because the Defendants do business in, or are based in, Monterey County.

4 **PARTIES**

5 8. Plaintiff Rigoberto Sarmiento worked seasonally for Defendants from 2015 until early 2020.

6 9. Plaintiff Leuvano-Vaca worked seasonally for Defendants pursuant to an H-2A visa in the
7 2019 and 2020 seasons. Plaintiff worked with a visa for Defendant Fresh Harvest in the 2019 season
8 and with a visa for Defendant Fresh Foods in the 2020 season.

9 10. Defendants petitioned for H-2A visas under the names of Fresh Foods or Fresh Harvest but
10 compensated foreign workers by paystubs from either employer regardless of the company name for
11 which the particular H-2A visas were petitioned.

12 11. Plaintiffs were employed as truck drivers, a position covered by the H-2A contracts, which
13 promised prevailing wages for this work.

14 12. Plaintiff Leuvano-Vaca was paid less than similarly situated domestic workers for the same
15 work in violation of the terms of the applicable H-2A contracts.

16 13. Defendants Fresh Harvest and Fresh Foods were labor contractors pursuant to 29 U.S.C. §
17 1802(7).

18 14. Plaintiff Sarmiento was a seasonal agricultural worker as defined by the Migrant and
19 Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1802(10).

20 15. Defendant Fresh Harvest, Inc. is a farm labor contractor licensed by the State of California
21 with license number FLC000187467 and licensed by the U.S. Department of Labor with license
22 number C-09-772971-J-20-R.

23 16. Defendant Fresh Harvest is an Arizona corporation registered to do business in California.

24 17. Fresh Harvest has a principal place of business at 101 E. Main St., Heber, California.

25 18. Fresh Harvest may be served with process through its counsel, Rob Roy of the Ventura
26 County Agricultural Association.

27 19. Defendant Fresh Foods, Inc. is a California corporation.

28

1 20. Defendant Fresh Foods has a principal place of business at 700 Airport Drive, King City,
2 California.

3 21. Defendant Fresh Foods is a farm labor contractor licensed by the State of California with
4 license number FLC000175777.

5 22. Defendants Fresh Foods and Fresh Harvest hire, employ and furnish migrant and seasonal
6 agricultural workers for a fee and are farm labor contractors as defined by 29 U.S.C. § 1802(7)
7 under the AWPA.

8 23. Defendant Fresh Foods has failed to register as a farm labor contractor with the U.S.
9 Department of Labor in violation of federal law.

10 24. Defendant SMD Logistics, Inc. is an Arizona corporation registered to do business in
11 California.

12 25. SMD Logistics has a mailing address of 101 E. Main St., Heber, California and its Chief
13 Executive Officer is David Scaroni.

14 26. Defendant SMD Logistics is the trucking arm of Defendant Fresh Harvest.

15 27. Defendant SMD Logistics is, upon information and belief, primarily directed from its
16 location at 26710 Encinal Road, Salinas, California.

17 28. Defendant SMD Logistics operated in concert with Defendants Fresh Harvest and Fresh
18 Foods.

19 29. Defendant SMD Logistics employees directed the actions of employees of Defendants Fresh
20 Harvest and Fresh Foods.

21 30. Defendant SMD Logistics supplied equipment operated by employees of Defendants Fresh
22 Harvest and Fresh Foods.

23 31. Upon information and belief, Defendants SMD Logistics, Fresh Harvest and Fresh Foods
24 formed one enterprise for employment purposes and constituted joint employers.

25 32. Upon information and belief, employees of Defendants SMD Logistics, Fresh Harvest and
26 Fresh Foods directed and assigned work to employees of the others.

27 33. Plaintiff Leuvano-Vaca was hired by employees or agents of Defendants Fresh Harvest and
28 SMD Logistics to work pursuant to a visa for Defendant Fresh Foods in the 2020 season.

1 34. Defendants employed domestic workers but to hide the non-agricultural nature of the truck
2 driver positions, Defendant SMD Logistics did not directly employ the H-2A workers and solely
3 directly employed domestic truck drivers and foreign truck drivers on H-2B visas.

4 35. Defendant Rava Ranches, Inc. is a grower, packer and shipper of agricultural products.

5 36. Defendant Rava Ranches contracted Defendants Fresh Harvest and Fresh Foods to provide
6 labor for its crops and truck drivers for hauling product over-the-road.

7 37. Defendant Rava Ranches, Inc. is a California corporation with a principal place of business
8 at 700 Airport Drive, King City, California.

9 DEFENDANTS' PARTICIPATION IN THE H-2A VISA PROGRAM

10 38. The H-2A program was created by 8 U.S.C. § 1188 and is implemented pursuant to the
11 regulations found at 20 C.F.R. §§ 655.0-655.185. An agricultural employer in the United States may
12 import H-2A workers if the United States Department of Labor ("U.S. DOL") certifies that (1) there
13 are not enough U.S. workers to perform the job and (2) the employment of H-2A workers will not
14 adversely affect the wages and working conditions of U.S. workers who are similarly employed. 8
15 U.S.C. § 1101(a)(15)(H)(ii)(a); 8 U.S.C. § 1188(a)(1).

16 39. Employers must file a temporary labor certification application with the U.S. DOL's
17 Employment and Training Administration. 20 C.F.R. § 655.130 (2010). The application has to
18 include a job offer, known as a "job order," that complies with the requirements of 20 C.F.R. §
19 655.122. The job order contains the terms to be offered to both foreign H-2A workers and domestic
20 workers throughout the United States. *See* 20 C.F.R. § 655.121(a)(2).

21 40. The relevant job orders were filed through the California Employment Development
22 Department office in Salinas, Monterey County, California.

23 41. The terms and conditions of the job orders, together with the requirements of 20 C.F.R. part
24 655, constituted employment contracts for domestic workers like Plaintiff Sarmiento and for foreign
25 workers on H-2A visas, including Plaintiff Leuvano-Vaca, and all others similarly situated.
26 20 C.F.R. § 655.103(b) (definition of "work contract").

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1 42. The H-2A program, its implementing regulations, and the applicable job orders here require
2 that foreign workers be paid “the same level of minimum benefits, wages, and working conditions
3 which must be offered to U.S. workers[.]” 20 C.F.R. § 655.122(a).

4 43. The H-2A employment contracts at issue here incorporate a regulatory definition of
5 employer found at 20 C.F.R. § 655.103(b) and contained the promise to “comply with applicable
6 Federal, State and local law and regulations.” 20 C.F.R. § 655.135(e).

7 44. In each applicable season, Defendant Fresh Harvest or Fresh Foods submitted job orders to
8 the U.S. DOL.

9 45. The Fresh Foods job orders were signed by Suzanne Rava.

10 46. The Fresh Harvest job orders were signed by Leticia Ridaura.

11 47. In 2020, when Defendant Fresh Harvest could not obtain a job order for truck drivers in its
12 own name, it submitted a job order in the name of Fresh Foods but subsequently transferred the
13 workers imported under that job order to its direct employ.

14 48. Plaintiff Leuvano-Vaca was employed subject to this job order and was transferred and
15 ultimately terminated from employment with Defendant Fresh Foods by an employee of Defendant
16 Fresh Harvest.

17 49. On information and belief, the job orders submitted under either the Fresh Harvest or Fresh
18 Foods companies were prepared by employees of Defendant Fresh Harvest or its affiliated
19 company, AgData Global.

20 50. In the employment contracts, the Defendants promised that each worker would earn at least
21 the AEWR [Adverse Effect Wage Rate], the prevailing hourly or piece rate wage, or the federal or
22 state minimum wage, whichever is higher, for all hours worked in the payroll period. The
23 employment contracts also promised overtime to truck drivers.

24 51. The employment contracts promised to pay the applicable AEWR, which was \$13.18 in
25 2018, \$13.92 in 2019, and \$14.77 in 2020. 82 Fed. Reg. 60628 (Dec. 21, 2017); 83. Fed. Reg.
26 66306 (Dec. 26, 2018); 84 Fed. Reg. 69774 (Dec. 19, 2019).

27 52. The vehicles Plaintiffs operated were well in excess of 26 tons Gross Vehicle Weight.

28 53. Plaintiffs primarily operated heavy-duty trucks on state and federal roads and highways.

1 54. The applicable prevailing wage for the position in which Defendants employed Plaintiffs
2 was the Heavy and Tractor-Trailer Truck Drivers.

3 55. Federal regulations specify that the median wage is appropriately considered the prevailing
4 wage. 20 C.F.R. § 655.10(b)(2).

5 56. The highest applicable mean wage was the wage for the Monterey-Salinas Metropolitan
6 Statistical area.

7 57. Defendants SMD Logistics, Fresh Harvest and Fresh Foods sought to avoid paying a
8 prevailing wage to truck drivers by including them within H-2A agricultural job orders for field
9 labor positions.

10 58. Defendants knew that the work was non-agricultural in nature for H-2A purposes because
11 Defendants Fresh Harvest, Fresh Foods and SMD Logistics were not growers of the crops
12 transported.

13 59. Plaintiffs' positions and those of other similarly situated were not field labor positions, and
14 were Heavy and Tractor-Trailer Truck Driver positions operating tractor-trailers on roads and
15 highways hauling harvested vegetables to Defendants' clients cooler and produce-packing locations.

16 60. Defendants knew that the wages they were offering were not prevailing wages and indeed
17 offered higher wages for truck driving to U.S. workers and to H-2B workers performing the same
18 work.

19 61. Finally, by participating in the H-2A program and importing workers from abroad, the
20 Defendants are bound to abide by the wage and payroll requirements, including those at 20 C.F.R.
21 §§ 655.120(a), 655.122(a), 655.122(c), 655.122(j), 655.122(k), 655.122(l), and 655.103(b).

22 62. Upon information and belief, as part of their petition to import foreign workers, Defendants
23 Fresh Harvest and Fresh Foods entered into a contract with Rava Ranches to act as a labor
24 contractor for Rava Ranches.

25 63. Defendant Fresh Harvest also entered into a contract with Defendant SMD Logistics,
26 however, upon information and belief, that contract for 758 workers was fictional.

27 ALLEGATIONS OF CLASS REPRESENTATIVE

28 64. Plaintiffs were offered work as truck drivers.

1 65. The paystubs Defendants prepared for truck drivers listed as their principal activity “hauling
2 commodity” or “trucking.”

3 66. Upon information and belief, Defendants had a separate payroll entry for hauling
4 commodity or trucking for H-2A workers at a lower hourly rate than the payroll entry used by
5 Defendants for payments to domestic workers for hauling or trucking.

6 67. Plaintiffs and others similarly situated were promised in the written employment contract,
7 among other things:

- 8 a. Pay for all hours worked;
- 9 b. Pay at the prevailing hourly wage if it was higher than the state or federal minimum
10 wage or the federally mandated Adverse Effect Wage Rate;
- 11 c. Pay that was equal for domestic and foreign workers performing the same work
12 activities;
- 13 d. A copy of the work contract;
- 14 e. Overtime pay after ten hours per day or 60 hours per week for truck driving; and
15 f. Payment of wages in compliance with California law.

16 68. The terms of employment for Plaintiffs and others similarly situated, whether as seasonal or
17 migrant agricultural workers, were required to be in writing as California law at Cal. Labor Code §
18 2810.5 mandates that the disclosure be in writing.

19 69. The terms of the H-2A employment contracts formed the applicable disclosures.

20 70. The terms of the required disclosure promised to Plaintiffs, and others similarly situated,
21 formed a working arrangement enforceable under federal law.

22 71. In violation of the working arrangement, Defendants did not pay domestic and foreign
23 workers equally.

24 72. On information and belief, Defendants did not pay prevailing wages to any truck driver.

25 73. Defendants knew the requirement to pay workers in corresponding employment the same
26 wage for the same work.

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1 74. Defendant Fresh Harvest marketed to prospective clients that it would provide a “wall” to
2 protect clients from having to meet the requirement of paying workers in corresponding
3 employment equally.

4 75. Defendants failure to pay workers in corresponding employment equally was a product of
5 Defendants scheme to avoid complying with their contractual and regulatory obligations.

6 76. Plaintiffs and others similarly situated were required to complete log books of their daily
7 truck operating activities in accordance with U.S. Department of Transportation regulations for 49
8 C.F.R. § 395.8.

9 77. The Occupational Code for the work performed by Plaintiffs and others operating trucks for
10 Defendants was 53-3032.00.

11 78. Defendant SMD Logistics offered employment for the work Plaintiffs performed at the
12 hourly wage of \$19.90 per hour to domestic workers during 2020.

13 79. As a result of their practice of failing to record all hours worked and failure to pay prevailing
14 or equal wages, Defendants, without justification, did not pay wages in keeping with California
15 wage statutes or the employment contract, and paid wages below those required by California law,
16 the contract, and the parties’ working arrangement.

17 80. Defendants’ paystubs violated the AWPA’s recordkeeping provisions and California
18 statutory paystub requirements by failing to list the correct hourly rate and the total wages earned.

19 81. At all times relevant to this action, Plaintiffs and members of the Class were not provided
20 thirty (30) minute duty-free unpaid meal periods.

21 82. Defendants required that Plaintiffs and others similarly situated report meal periods, Plaintiffs
22 and others similarly situated did not receive.

23 83. Defendants have paid some missed meal period premiums but have failed to pay Plaintiffs or
24 the class all missed meal-period premiums owed and have failed to pay the missed meal period
25 premiums at the proper hourly rate.

26 84. At all times relevant to this action, Defendants knew, should have known, or otherwise showed
27 willful and reckless disregard for the requirement that Plaintiffs and members of the Class were
28

1 entitled to receive all meal periods or payment of one additional hour of pay at the regular rate of pay
2 when a meal period was missed, late, or incomplete.

3 85. Specifically, at all times relevant to this action, Plaintiffs and members of the Class regularly
4 worked in excess of five (5) hours in a day without being provided at least one, timely (within five
5 (5) hours of the start of work) and off duty thirty (30) minute meal period.

6 86. On information and belief, Defendants knew, should have known, or otherwise showed willful
7 and reckless disregard for the requirement that Plaintiffs and members of the Class were entitled to
8 receive all rest breaks or payment of one additional hour of pay at the applicable regular rate of pay
9 when a rest break was missed or incomplete, and that they did not receive payment of one additional
10 hour of pay at the regular rate of pay when a rest break was missed or incomplete.

11 87. Plaintiffs and members of the Class regularly worked in excess of 3.5 hours in a day without
12 being provided an off-duty and uninterrupted ten (10) minute rest break, regularly worked more than
13 six (6) hours in a day without a second ten (10) minute off-duty rest break, and worked more than ten
14 hours per day without a third ten (10) minute off-duty rest break.

15 88. Defendants did not pay Plaintiffs and other workers similarly situated rest break premium
16 wages for late, short or missed rest breaks.

17 89. Defendants required Plaintiffs report rest breaks that Defendants knew or should have known
18 were not taken and which were not duty free.

19 90. Defendant SMD Logistics required that Plaintiff Leuvano-Vaca and others similarly situated
20 complete its timesheets and log books for their time operating trucks for Defendants Fresh Foods
21 and Fresh Harvest.

22 91. Upon information and belief, Defendant SMD Logistics employees directed Plaintiffs and
23 others similarly situated when they received paystubs from Fresh Foods or Fresh Harvest.

24 92. Supervisors of Defendant SMD Logistics had the power to hire and fire employees of
25 Defendants Fresh Foods and Fresh Harvest.

26 93. Supervisors of Defendant SMD Logistics exercised their power to hire and fire employees of
27 Defendants Fresh Foods and Fresh Harvest.

28 **CLIENT EMPLOYERS**

1 94. Defendant Rava Ranches, Inc. is a California corporation engaged in the business of
2 growing and harvesting agricultural products including specifically fresh market vegetables.

3 95. Defendants Fresh Foods and Fresh Harvest are farm labor contractors registered with the
4 state of California.

5 96. **Rava Ranches is a client employer.** On information and belief, Defendant Rava Ranches
6 owns, leases or controls agricultural property in and around Monterey County, California.

7 97. Defendants Fresh Harvest and Fresh Foods served as labor contractors for Defendant Rava
8 Ranches in that they supplied Defendant Rava Ranches with workers as part of the usual course of
9 business to provide agricultural labor in connection with the production of agricultural crops by
10 Defendant Rava Ranches.

11 98. At all times relevant to Plaintiffs' claims, Defendant Rava Ranches had a workforce of at
12 least 25 workers, including workers supplied by Defendants Fresh Harvest and Fresh Foods.

13 99. Based on the arrangements between Defendants, Defendant Rava Ranches was Plaintiffs'
14 client employer under California Labor Code § 2810.3 with respect to all hours worked in
15 connection with the transportation of crops for harvests performed on the property owned or
16 controlled by Defendant Rava Ranches. As such, Defendant Rava Ranches is liable to Plaintiffs and
17 others similarly situated for all unpaid wages to the same extent as Defendants Fresh Harvest and
18 Fresh Foods.

19 100. **Defendant Rava Ranches is a joint employer.** Through the relationship described in
20 paragraphs 94 through 99, Defendant Rava Ranches had the power to control Plaintiffs' work.

21 101. The working relationship between Plaintiffs and other similarly situated workers and
22 Defendant Rava Ranches was long term and members of the Rava family controlled both Rava
23 Ranches and Defendant Fresh Foods.

24 102. Defendant Rava Ranches controlled property upon which Plaintiffs labored, and provided
25 investment capital, which as a matter of economic reality, Plaintiffs and the class of other workers
26 similarly situated were economically dependent on Defendant Rava Ranches.

27 103. For each action taken by Defendants Fresh Foods and Fresh Harvest in furtherance of their
28 business arrangement with Defendant Rava Ranches—including, *inter alia*, recruiting, hiring,

1 supervising, and paying workers, Defendants Fresh Foods and Fresh Harvest acted as agents of
2 Defendant Rava Ranches.

3 104. Those actions not expressly authorized by Defendant Rava Ranches were ratified by
4 Defendant Rava Ranches' acceptance of Defendants Fresh Harvest and Fresh Foods' continued
5 supervision and recruitment of workers for Defendant Rava Ranches.

6 **CLASS ACTION ALLEGATIONS**

7 105. **Proposed Class.** Plaintiffs brings this action pursuant to Rule 23 of the Federal Rules of
8 Civil Procedure on behalf of the following Class:

- 9 a. All workers employed by Defendants at work sites in California or Arizona in a
10 truck driving or tractor-trailer driver position and compensated at less than the
11 median prevailing hourly wage for the region;
- 12 b. All workers employed by Defendants at work sites in California pursuant to a written
13 employment contract incorporating California law who were denied pay for missed,
14 on-duty, or late meal and rest breaks;
- 15 c. All workers employed by Defendants at work sites in California pursuant to a written
16 employment contract promising overtime compensation who were denied overtime
17 compensation at the proper hourly wage for the work performed; and
- 18 d. All workers employed by Defendants at work sites in California or Arizona and paid
19 less than domestic workers employed in the same truck driving position.

20 106. There is a well-defined community of interest in the litigation and the class is ascertainable.

21 107. **Numerosity:** The Plaintiff Class is numerous such that the individual joinder of all members
22 is impractical. While the exact number of class members is unknown to Plaintiffs at this time,
23 Plaintiffs believe that the class consists of more than 70 individual employees. The names and
24 addresses of the Class Members are available from Defendants. Notice can be provided to the Class
25 Members via mail, Facebook, WhatsApp, radio and postings using techniques and a form of notice
26 similar to those customarily used in agricultural class action lawsuits of this nature.

27 108. **Typicality:** Plaintiffs' claims are typical of the claims of each class they seek to represent in
28 that they arise from Defendants' failure to conform their wage and hour practices to the

1 requirements of the federal AWPAs requirements and regulations, the AWPAs working arrangement,
2 the H-2A contract and H-2A program regulations, the prevailing wage requirements contractually
3 offered, and the California Labor Code and the applicable California Wage Order, resulting in
4 injury to Plaintiffs and the other putative class members.

5 **109. Common Questions Predominate:** The questions raised by this Complaint are of common
6 or general interest to the members of the Plaintiff Class, who have a well-defined community of
7 interest in the questions of law and fact raised in this action. Common questions of law and fact
8 exist as to all members of the Plaintiff Class and predominate over any questions that affect only
9 individual members of the Class. The common questions of law and fact applicable to both classes
10 include, but are not limited to:

- 11 a. Whether the Defendants failed to pay the median prevailing wage as determined by
12 U.S. Department of Labor data for the position of Heavy and Tractor-Trailer Truck
13 Driver;
- 14 b. Whether Defendants' pay practices, including those of failing to record compensable
15 waiting and on-call time, conform to the requirements of the California Labor Code,
16 Wage Order and the AWPAs working arrangement;
- 17 c. Whether the Defendants failed to pay the wages promised in the AWPAs working
18 arrangement, the employment contract, and as required by California Industrial
19 Welfare Commission Wage Order, and California employment statutes;
- 20 d. Whether the Defendants failed to record and compensate the Plaintiff Class for all
21 hours of work, and thus, failing to pay them the applicable prevailing wage as a
22 minimum wage as required by California Labor Code §§ 1182.11-1182.13, and
23 1197, the employment contract, and California Wage Orders;
- 24 e. Whether the Defendants failed to pay all members of the Plaintiff Class their full
25 wages when due in violation of California Labor Code §§ 201-203;
- 26 f. Whether, through the unlawful conduct herein alleged, the Defendants violated Cal.
27 Business and Professions Code § 17200 et seq.;

- 1 g. Whether the Defendants are liable as joint employers for the actions perpetrated
- 2 against the Plaintiff Class;
- 3 h. Whether Defendant Rava Ranches is liable under Labor Code § 2810.3 for the
- 4 Plaintiff Class' unpaid wages to the same extent as Defendants Fresh Harvest, Fresh
- 5 Foods, and SMD Logistics;
- 6 i. What relief is necessary to remedy Defendants' unfair and unlawful conduct as
- 7 herein alleged; and,
- 8 j. Other common questions of law and fact.

9 **110. Adequacy of Plaintiffs as Class Representatives.** Plaintiffs Sarmiento and Leuvano-Vaca
10 can adequately and fairly represent the interests of the Plaintiff Class as defined above because their
11 individual interests are consistent with, not antagonistic to, the interests of the class. Further,
12 Plaintiffs have no actual or potential conflict with any member of the class.

13 **111. Adequacy of Counsel for the Class.** Counsel for Plaintiffs possess the requisite resources
14 and ability to prosecute this case as a class action and are experienced labor and employment
15 attorneys who have successfully litigated other cases involving similar issues.

16 **112. Propriety of Class Action Mechanism.** Class certification is appropriate under Rule
17 23(b)(3) because common questions of law and fact predominate over any questions affecting only
18 individual members of each Class. Defendants have implemented a scheme that is generally
19 applicable to the Plaintiff Class, making it appropriate to issue relief, including injunctive relief and
20 corresponding declaratory relief with respect to the Plaintiff Class. In particular, the violations of
21 law perpetrated against all Class Members in this case revolve around the application and
22 interpretation of the AWPA working arrangement, AWPA disclosure, and AWPA and state
23 paystubs and wage payment violations, H-2A contract, and interpretation of prevailing wage
24 requirements. Similarly, the Defendants' liability as joint employers is based on actions taken with
25 regard to the Plaintiff Class as a whole. The relationship between Defendant Rava Ranches and the
26 Plaintiff Class is also common to members of the class.

27 **113.** The Plaintiff Class has been injured and is entitled to recover from Defendants for wrongful
28 conduct and injuries. Class treatment will allow those similarly-situated persons to litigate their

1 claims in the manner that is most efficient and economical for the parties and the judicial system.
2 Further, the prosecution of separate actions against Defendants by individual class members would
3 create a risk of inconsistent or varying adjudications that would establish incompatible standards of
4 conduct for Defendants. For all these and other reasons, a class action is superior to other available
5 methods for the fair and efficient adjudication of the controversy set forth in this Complaint.

6 **FIRST CLAIM FOR RELIEF – AGRICULTURAL WORKER PROTECTION ACT**

7 Violation of the Migrant and Seasonal Agricultural Workers Protection Act (“AWPA”)
8 (29 U.S.C. §§ 1801 et seq. – Rule 23 Class Count)

9 114. Plaintiff Sarmiento incorporates paragraphs 8-104, and 105-113 of this Complaint by
10 reference as though fully set forth herein.

11 115. Plaintiff Sarmiento asserts this claim for the 2016 to present seasons in which he worked for
12 the Defendants pursuant to 29 U.S.C. § 1854. This count is brought as a Rule 23 class claim.

13 116. Plaintiff Sarmiento’s employment, and that of other truck drivers employed by Defendants,
14 constituted secondary-agricultural work protected by the AWPA as it was seasonal and consisted of
15 hauling agricultural products to coolers and packing sheds which formed part of the handling of
16 agricultural commodities prior to their delivery for storage or processing.

17 117. Defendants intentionally violated the rights of Plaintiff Sarmiento and others similarly situated
18 under the AWPA by:

- 19 a. Failing to provide a written disclosure of the terms and conditions of work as required by
20 29 U.S.C. § 1821(a) and as required by 29 U.S.C. § 1831(a) through operation of Cal.
21 Labor Code 2810.5;
22
23 b. Providing false and misleading information regarding the terms and conditions of
24 employment, in violation of 29 U.S.C. §§ 1821(f) and 1831(e), by failing to disclose the
25 terms of the H-2A contracts for corresponding truck driving employment or the promise
26 to pay prevailing wages;
27
28 c. Violating the terms of the working arrangement, without just cause, made with Plaintiff
Sarmiento and others similarly situated, in violation of 29 U.S.C. §§ 1822(c) and 1832(c);
these working arrangements included the promise to pay prevailing wages, to pay wage

1 equally to domestic and foreign workers, to provide a copy of the work contract, and to
2 pay overtime wages after 10 hours or 60 weekly hours;

3 d. Failing to pay wages when due for unpaid hours worked, and for missed or non-compliant
4 meal periods and rest breaks, in violation of 29 U.S.C. §§ 1822(a) and 1832(a); and

5 e. Failing to provide workers with accurate, itemized written statements which include the
6 correct number of hours worked, the correct hourly, piece rate, and nonproductive time
7 rates of pay, the correct total pay period earnings, and the correct net pay, in violation of
8 29 U.S.C. §§ 1821(d) and 1831(c).

9 118. Additionally, Defendant Fresh Foods engaged in labor contracting activities for a fee without
10 a federal license from the Secretary of the U.S. Department of Labor to do so, in violation of 29
11 U.S.C. § 1811.

12 119. Defendant Rava Ranches engaged the services of a federally-unlicensed labor contractor
13 without first taking adequate steps to check licensing in violation of 29 U.S.C. § 1842.

14 120. Pursuant to California Labor Code § 2810.5, employers must provide notice to employees of
15 their rate(s) of pay, designated pay day, and the basis of wage payment. As such, Defendants had at
16 the time of Plaintiff Sarmiento's seasonal recruitment and of others similarly situated, and continued
17 to have, an obligation to inform Plaintiff and others similarly situated of such information, including
18 the applicable prevailing hourly rate and of promised overtime rates of pay.

19 121. The failure by Defendants to provide Plaintiff Sarmiento and the Class notice of these details
20 regarding compensation operates as a violation of AWWA's disclosure and working arrangement
21 provisions.

22 122. Defendants provided false and misleading information regarding the terms and conditions of
23 employment, including failing to disclose the promise to pay prevailing wages, failure to disclose the
24 terms of the written employment contract, and failure to disclose that off-duty meal and rest periods
25 would not be provided.

26 123. For each violation of AWWA, Plaintiff Sarmiento and others similarly situated are entitled to
27 recover his or her actual damages, or up to \$500 per violation in statutory damages, pursuant to 29
28 U.S.C. § 1854.

1 **SECOND CLAIM FOR RELIEF – CALIFORNIA MINIMUM WAGE**

2 124. Pursuant to Rule 23(b)(3), all Plaintiffs brings this as a class claim and allege that
3 Defendants' actions violated their rights and the rights of other similarly situated individuals to
4 receive the minimum wage required by California Law.

5 125. As described above in paragraph 64 through 80, Defendants did not pay the minimum
6 promised wages to Plaintiffs and the Plaintiff Class.

7 126. The hours, referenced above, were worked without additional payment. Consequently, those
8 hours were compensated in violation of California's minimum wage laws. Cal. Labor Code §§
9 1182.11-1182.13, 1194, and 1197.

10 127. Because Plaintiffs and others similarly situated had been promised a higher minimum wage,
11 namely the prevailing wage for their job activity, this claim asserts a minimum wage claim based on
12 the higher hourly minimum promised Plaintiffs and others similarly situated.

13 128. As a result of Defendants' failure to comply with the aforementioned portions of the
14 California Labor Code, Plaintiffs and members of the Plaintiff Class have been deprived of wages
15 due them in amounts to be proven at trial, and are also owed liquidated damages for violations of
16 their right to a minimum wage.

17 129. Pursuant to Cal. Labor Code § 1194(a), Plaintiffs seeks to recover the unpaid balance for all
18 uncompensated hours, and reasonable attorneys' fees and costs. Pursuant to Cal. Labor § 1194.2,
19 Plaintiffs also seek to recover liquidated damages.

20 130. Pursuant to Cal. Lab. Code § 2810.3, Plaintiffs and the Plaintiff Class are entitled to recover
21 from the Defendant Rava Ranches for this Second Claim for Relief with respect to all hours worked
22 in connection with production of crops for Defendant Rava Ranches as further detailed in
23 paragraphs 94 through 104.

24 **THIRD CLAIM FOR RELIEF**

25 **FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CALIFORNIA LABOR**
26 **CODE § 1194 AND CONTRACTUAL PROMISE**

27 131. Plaintiffs incorporate the allegations in paragraphs 8 to 113.
28

1 132. Plaintiffs brings this claim pursuant to California Labor Code § 1194 and California contract
2 law on behalf of themselves and a class of other workers, pursuant to Federal Rule 23(b)(3), and
3 alleges that Defendants have violated California Overtime requirements and their promise to pay
4 overtime by failing to accurately record and pay overtime wages for work performed.

5 133. Defendants contractually promised through the applicable job orders that overtime wages
6 would be paid to truck drivers.

7 134. Defendants failed to pay Plaintiffs and the Plaintiff Class overtime wages in the amount of
8 one and a half times the regular rate for all hours worked in each workday in excess of ten (10)
9 hours for the seasons prior to 2019, in excess of nine and a half (9.5) hours for the 2019 season, and
10 in excess of nine (9) hours for the 2020 season, and/or failed to pay overtime based on weekly hours
11 of sixty (60) prior to 2019, fifty-five (55) hours in the 2019 season, and fifty (50) hours in the 2020
12 season in a workweek as required by California Labor Code § 1194, California Wage Orders and
13 the contractual promises.

14 135. Specifically, Defendants SMD Logistics, Fresh Harvest and Fresh Foods failed to accurately
15 record and compensate their truck drivers at the applicable prevailing wage for all compensable
16 hours, as detailed in paragraphs 72 through 79.

17 136. Plaintiffs and a class of others similarly situated did not receive premium pay for all
18 overtime hours worked as a result of the underreporting of hours and the underpayment of
19 Plaintiffs' regular rate.

20 137. As a direct and proximate result of the acts and/or omissions of the Defendants, Plaintiffs
21 and the class have been deprived of overtime wages due and are entitled to recover their unpaid
22 wages.

23 138. Plaintiffs and the class seek the relief described below, including damages in the amount
24 equal to unpaid overtime hours (at the premium rate of 150% of the prevailing hourly wage), pre-
25 and post-judgment interest and attorney's fees and costs pursuant to Cal. Labor Code § 1194.

26 139. Pursuant to Cal. Lab. Code § 2810.3, Plaintiffs and the Plaintiff Class are entitled to recover
27 from the Defendant Rava Ranches for their Third Claim for Relief with respect to all hours worked
28

1 in connection with hauling crops for harvests conducted on land controlled or owned by Defendant
2 Rava Ranches as further detailed in paragraphs 94 through 99.

3 **FOURTH CLAIM FOR RELIEF**

4 Failure to Provide Meal Periods, or Premium Wages in Lieu Thereof
5 (Cal. Lab. Code §§ 226.7, 512 & Wage Orders – Rule 23 Class Count)

6 140. Plaintiffs incorporate paragraphs 10-30, 81-88, and 105-113 of this Complaint by reference
7 as though fully set forth herein.

8 141. Plaintiffs bring this Fourth Claim against Defendant Fresh Harvest, SMD Logistics and Fresh
9 Foods pursuant to California Labor Code §§ 226.7 and 512 to enforce the meal period provisions of
10 the California Labor Code and the contractual promise to provide it. This count is brought as a Rule
11 23 class claim.

12 142. Defendants, through the filing of job orders which covered the employment of Plaintiffs and
13 other similarly situated workers, promised to comply with all “Federal and State . . . employment-
14 related law” which at the time of the submission of the job orders at issue included a promise to
15 provide meal periods in compliance with California law as detailed in this Count.

16 143. California Labor Code § 512 and California Wage Orders impose an affirmative obligation
17 on employers to provide employees with an uninterrupted, duty-free, meal period of at least thirty
18 (30) minutes for each work period of five (5) or more hours before the end of the fifth (5th) hour of
19 work.

20 144. Labor Code § 226.7 and/or the Wage Orders require employers to pay employees an
21 additional hour of premium wages at the employee’s required regular rate of compensation on each
22 workday that the employee is not provided with a meal period.

23 145. Defendants failed to relieve Plaintiffs and others similarly situated of all duties for
24 uninterrupted meal periods of at least thirty (30) minutes before the end of their fifth (5th) hour of
25 work as detailed in paragraphs 81 to 85.

26 146. Defendants failed to pay premium wages for each workday in which Plaintiffs and others
27 similarly situated were not provided an uninterrupted and timely thirty (30) minute meal period.
28

1 147. Defendants paid, some, limited premium wages for workdays in the 2020 season, but at the
2 incorrect premium rate.

3 148. At all times relevant to this action, Defendants have maintained policies and practices with
4 respect to employee scheduling and meal periods that prevent Plaintiffs and others similarly situated
5 from being relieved of all duties for an uninterrupted meal period of at least thirty (30) minutes before
6 the end of their fifth (5th) hour of work, and that fail to pay them premium wages on workdays in
7 which they are not provided a lawful meal period.

8 149. As a result of Defendants' meal period practices, Plaintiffs and others similarly situated are
9 entitled to receive premium wage compensation in an amount equal to one hour of additional wages
10 at the applicable or promised rate of pay for each workday that Defendants failed to provide Plaintiff
11 and others similarly situated lawful meal periods pursuant to their contractual promise and Labor
12 Code § 226.7.

13 150. As such, Plaintiffs seeks, on behalf of themselves and others similarly situated, premium
14 wages, interest thereon, and an award of reasonable costs.

15 **FIFTH CLAIM FOR RELIEF**

16 Failure to Provide Rest Breaks, or Premium Wages in Lieu Thereof
17 (Cal. Lab. Code §§ 226.2, 226.7, 1198 & Wage Orders – Rule 23 Class Count)

18 151. Plaintiffs incorporate paragraphs 8-37, 81-88, and 105-113 of this Complaint by reference as
19 though fully set forth herein.

20 152. Plaintiffs bring this Fifth Claim against Defendant Fresh Harvest, SMD Logistics and Fresh
21 Foods pursuant to California Labor Code § 226.7 to enforce the rest break provisions of the California
22 Labor Code and the contractual promise to provide it. This count is brought as a Rule 23 class claim.

23 153. Defendants, through the filing of job orders which covered the employment of Plaintiffs and
24 other similarly situated workers, promised to comply with all “Federal and State . . . employment-
25 related law” which at the time of the submission of the job orders at issue included a promise to
26 provide rest breaks in compliance with California law as detailed in this Count.

27 154. Applicable Wage Orders impose an affirmative obligation on employers to permit and
28 authorize employees to take required uninterrupted rest breaks at a rate of no less than ten (10)

1 minutes for each four (4) hour work period, or major fraction thereof, that must be in the middle of
2 each work period insofar as is practicable.

3 155. California Labor Code § 226.7 and Section 12(C) of the California Wage Orders require
4 employers to pay non-exempt employees an additional hour of premium wages at the employee's
5 regular rate of compensation on each workday that the employee is not provided with a rest break.

6 156. Defendants did not authorize and permit Plaintiffs and others similarly situated to take
7 uninterrupted rest breaks of at least ten (10) minutes for each four (4) hour work period, or major
8 fraction thereof, and failed to pay premium wages in lieu of providing lawful rest breaks on such
9 workdays.

10 157. At all times relevant to this action, Defendants have maintained policies and practices with
11 respect to employee scheduling and rest breaks that have failed to authorize and/or reasonably permit
12 Plaintiffs and the Class from being relieved of all duties for an uninterrupted rest break of at least
13 ten (10) minutes for each four (4) hour work period, or major fraction thereof, and which fail to pay
14 them premium wages on workdays in which they are not provided a lawful rest breaks.

15 158. As a result of Defendants' rest break practices, Plaintiffs and the Class are entitled to receive
16 premium wage compensation in an amount equal to one hour of additional wages at the applicable
17 contractual rate of pay for each workday that Defendants failed to provide Plaintiffs lawful rest
18 breaks pursuant to their contractual promise and Labor Code § 226.7.

19 159. As such, Plaintiffs seek, on behalf of themselves and others similarly situated, premium
20 wages, interest thereon, and an award of reasonable costs.

21 **SIXTH CLAIM FOR RELIEF**

22 Breach of Employment Contract

23 (Common Law - Rule 23 Class Count)

24 160. Plaintiffs incorporate paragraphs 8-113 of this Complaint by reference as though fully set
25 forth herein.

26 161. This Count sets forth a claim against all Defendants.

27 162. Plaintiffs bring this Sixth Claim against all Defendants for Defendants' breach of the H-2A
28 employment contracts.

1 163. This count is brought as a Rule 23 class claim for Defendants failure to pay the higher of the
2 contractually promised wage rate, the prevailing wage, or the state or federal minimum wage for all
3 compensable hours worked under the terms of the H-2A order for Plaintiffs, H-2A truck drivers
4 employed by Defendants, and those domestic workers in corresponding employment.

5 164. At all times relevant to this action, Plaintiffs and others similarly situated, including H-2A
6 visa-holding truck drivers and domestic truck drivers employed by Defendants, were employed
7 under the terms and conditions of contained in the H-2A job orders described in paragraphs 39 to
8 62.

9 165. The employment contracts promised Plaintiffs and others similarly situated the applicable
10 prevailing wage.

11 166. The prevailing wage applicable for truck driving was in excess of \$16 per hour during all
12 applicable time periods.

13 167. Defendants also contractually promised to pay domestic and foreign worker equally.

14 168. Defendants did not provide the same wages and employment benefits to foreign and domestic
15 workers.

16 169. Plaintiffs and others similarly situated performed on their relevant employment contracts.

17 170. Defendants failed to pay all compensable hours worked at the contractually-promised wage
18 rates.

19 171. Defendants violations incurred in part because Defendants failed to pay the contractually
20 promised prevailing hourly compensation.

21 172. As a direct and proximate result of this failure Plaintiffs and the Plaintiff Class have been
22 deprived of contractually promised wages and benefits due and are entitled to recover the amounts
23 due.

24 173. Pursuant to Labor Code 2810.3, Plaintiffs and the Plaintiff Class are entitled to recover all
25 relief to which they are entitled from Defendant Rava Ranches with respect to all hours worked in
26 connection with the hauling of crops for harvests performed on the property of Defendant Rava
27 Ranches.

28 **SEVENTH CLAIM FOR RELIEF**

1 Failure to Furnish Accurate Itemized Wage Statements
2 (Cal. Lab. Code §§ 226, 226.2 & Wage Orders – Rule 23 Class Count)

3 174. Plaintiffs incorporate paragraphs 8 through 113 of this Complaint by reference as though
4 fully set forth herein.

5 175. Plaintiffs bring Count Seven against Defendants Fresh Harvest, SMD Logistics and Fresh
6 Foods pursuant to California Labor Code §§ 226 and 226.2 to enforce the wage statement provisions
7 of the California Labor Code.

8 176. This count is brought as a Rule 23 class claim.

9 177. At all times relevant to this action, the wage statements provided by Defendants to Plaintiffs
10 and the Class failed to contain the information required by California Labor Code §§ 226 and 226.2.

11 178. Defendants furnished wage statements that lacked the following information:

- 12 a. Total hours that deducted for meal periods not actually provided;
13 b. accurate total hours worked;
14 c. and accurate gross and net wages earned.

15 179. By failing to pay Plaintiffs and others similarly situated for minimum wages owed, overtime
16 wages owed, and/or premium wages for unlawfully-provided meal periods and/or rest breaks,
17 Defendants have furnished Plaintiffs and others similarly situated with itemized wage statements
18 that do not accurately reflect, among other things, gross and net wages earned, and the applicable
19 wage rates.

20 180. At all times relevant to this action, Defendants have furnished Plaintiffs and others similarly
21 situated with inaccurate itemized wage statements during pay periods in which Plaintiffs and others
22 similarly situated were compensated at wages rates that were not the prevailing wage rate promised
23 and owed to the drivers.

24 181. At all times relevant to this action, Defendants' failure to provide accurate itemized wage
25 statements has been knowing and intentional, in that Defendants have had the ability to provide
26 accurate itemized wage statements, but have instead knowingly and intentionally provided
27 inaccurate wage statements as a result of policies and practices that failed to keep accurate records
28

1 of all hours worked, and the total amount of minimum and premium wages owed, and all applicable
2 rates of pay.

3 182. At all times relevant to this action, Plaintiffs and the Class have suffered injuries due to
4 Defendants' failure to provide accurate itemized wage statements in that, among other things, their
5 legal rights to receive accurate itemized wage statements have been violated, they have been misled
6 about the amounts of wages they have earned, they have had to spend additional time reviewing and
7 analyzing their pay records, they have been prevented from immediately challenging allegedly
8 unlawful pay practices, they have needed or will need to reconstruct time and pay records and
9 perform mathematical computations to determine the amounts of wages they have earned or the
10 applicable rates of pay, and/or have had inaccurate information about their wages and deductions
11 submitted to government agencies.

12 183. Pursuant to California Labor Code § 226(e), Plaintiffs seeks to recover, on behalf of
13 themselves and the Class, the greater of actual damages or \$50 for the initial pay period in which a
14 violation occurred, the greater of actual damages or \$100 for each violation in a subsequent pay
15 period, up to the greater of actual damages or an aggregate \$4,000 penalty, as well as awards of
16 reasonable attorneys' fees and costs, all in amounts subject to proof.

17 184. As such, Plaintiffs seek, on behalf of themselves and others similarly situated, statutory wage
18 statement penalties, and awards of reasonable costs and attorneys' fees.

19 **EIGHTH CLAIM FOR RELIEF**

20 California's Unfair Competition Law ("UCL")

21 (Cal. Bus. & Prof. Code §§ 17200 et seq. – Rule 23 Class Count)

22 185. Plaintiffs incorporate paragraphs 8 through 104 and 105 through 113 of this Complaint by
23 reference as though fully set forth herein.

24 186. Plaintiffs hereby bring this Eighth Claim against Defendants pursuant to California Business
25 & Professions Code §§ 17200 et seq. to enforce the provisions prohibiting unlawful and/or unfair
26 business practices of the California Business & Professions Code.

27 187. California Business and Professions Code §§ 17200 et seq. defines "unfair competition" to
28 include any unlawful business practice.

1 188. Plaintiffs sue on behalf of themselves and others similarly situated pursuant to California
2 Business and Professions Code §§ 17200 *et seq.*

3 189. Plaintiffs and others similarly situated suffered injury-in-fact and have lost money as a result
4 of Defendants' unfair competition alleged herein.

5 190. Plaintiffs and others similarly situated were not paid minimum, overtime and reporting time
6 wages as required by California Labor Code §§ 1182.12, 1194, 1197, 1198, and Industrial Welfare
7 Commission Wage Orders at paragraphs 3 and 5; Plaintiffs and others similarly situated were not
8 provided with meal periods, and/or premium wages in lieu thereof, in violation of California Labor
9 Code § 226.7 and applicable California Wage Orders; Plaintiffs and others similarly situated were
10 not provided with rest breaks, and/or premium wages in lieu thereof, in violation of California Labor
11 Code § 226.7 and Wage Orders at paragraph 12; Plaintiffs and others similarly situated were not
12 indemnified for necessary business expenditures, in violation of California Labor Code § 2802;
13 Plaintiffs and others similarly situated were not provided accurate itemized wage statements in
14 violation of California Labor Code §§ 226 and 226.2.

15 191. Pursuant to California Business and Professions Code § 17203, Plaintiffs seek, on behalf of
16 themselves and others similarly situated, restitution of all moneys and property, including, but not
17 limited to, earned minimum, reporting, and premium wages that Defendants either acquired, and/or
18 may have acquired, from them by means of unfair competition in amounts subject to proof at trial.

19 192. On information and belief, at all times relevant to this action, Defendants have either
20 acquired, or may have acquired, money or property in the form of earned minimum wages, reporting
21 wages and premium wages from Plaintiffs and members of the Class by means of unfair competition
22 as a result of Defendants' unlawful failure to pay them those wages, and related failures to maintain
23 accurate records, indemnify for necessary business expenditures, or timely pay final wages at
24 resignation or termination, in violation of the requirements of the California Labor Code and Wage
25 Order 14. Defendants, by the acts or omissions alleged of herein, have injured and are injuring the
26 interests of the general public in that other employers who have been or currently are employing
27 farm workers and attempting to do so in honest compliance with applicable wage and hour laws,
28

1 including the laws violated by Defendants, are at an unfair competitive disadvantage as a result of
2 Defendants' conduct.

3 193. As such, Plaintiffs seek, on behalf of themselves and others similarly situated, an injunction
4 restraining Defendants from maintaining and enforcing the unfair and/or unlawful practices and
5 policies that have resulted in the violations complained of herein, restitution of Plaintiffs and the
6 Class' wages, and the economic value of benefits unlawfully denied them by Defendants.

7 194. In addition, because Plaintiffs are enforcing important rights affecting the public interest
8 within the meaning of California Code of Civil Procedure § 1021.5, they seek payment of attorneys'
9 fees and costs.

10 **NINTH CLAIM FOR RELIEF**

11 **Waiting Time Penalties for Failure to Pay All Wages Due Pursuant to Cal. Labor Code § 203**

12 195. Plaintiffs incorporate by reference the allegations in paragraphs 1 to 130.

13 196. This count sets forth a claim against all Defendants.

14 197. Pursuant to Cal. Labor Code § 203, Plaintiffs bring this claim on behalf of themselves and
15 the class, pursuant to Rule 23(b)(3), for all Defendants' failure to pay all outstanding wages due
16 upon separation from employment.

17 198. When seasonal employment comes to an end, California law requires an employer
18 immediately pay all wages owed which in no event can be a period greater than 72 hours. Cal.
19 Labor Code § 201.

20 199. When a worker is terminated, California law requires an employer immediately pay all
21 wages owed which cannot be later than 24 hours from the time of termination. Cal. Labor Code §
22 201.

23 200. Where an employer fails to comply with Cal. Labor Code §§ 201, the affected employee is
24 entitled to receive a penalty in the amount of one day's wages for every day that their employer
25 willfully denies this final payment of wages, up to a maximum of 30 days. Cal. Labor Code § 203.

26 201. The Defendants did not pay Plaintiffs or similarly situated class members all their wages
27 owed, including payment for all hours worked, overtime premium pay, or their contractually
28 promised wages.

1 202. Plaintiffs and others similarly situated did not receive these wages in their last paycheck
2 upon the seasonal end of their employment, nor upon their involuntary termination, with the
3 Defendants.

4 203. By failing to compensate Plaintiffs, and similarly situated members of the Plaintiff Class
5 who have quit, been discharged, or whose employment has seasonally ended during the relevant
6 statutory period as required by the California Labor Code and the applicable wage order,
7 Defendants have willfully failed to make timely payment of the full wages due to their former
8 employees in violation of Cal. Labor Code § 201.

9 204. Pursuant to Cal. Labor Code § 203, Plaintiffs and members of the Plaintiff Class who have
10 quit, been discharged, or whose employment has seasonally ended are entitled to waiting time
11 penalties of up to 30 days' wages per person.

12 205. Pursuant to Cal. Lab. Code § 2810.3, Plaintiffs and the Class are entitled to recover all relief
13 to which they are entitled for this Ninth Claim for Relief from Defendant Rava Ranches with respect
14 to all hours hauling product for harvests performed on the property of Defendant Rava Ranches as
15 future detailed in paragraphs 94 through 99.

16 TENTH CLAIM FOR RELIEF

17 **Civil Penalties under the Private Attorneys' General Act, Cal. Labor Code 2698**

18 206. This Count asserts a violation of the California Private Attorneys' General Act ("PAGA").

19 207. Plaintiffs bring this Tenth Claim against Defendants pursuant to California Labor Code § 2698
20 *et seq.* to enforce California's Private Attorney Generals' Act. This count is brought as a
21 representative PAGA claim.

22 208. PAGA permits individuals to recover civil penalties on behalf of themselves and other current
23 or former employees for violations of California's Labor Code pursuant to § 2699(a).

24 209. On March 9, 2023, Plaintiffs gave written notice of the facts and theories regarding
25 Defendants' violations of the various provisions of the California Labor Code protecting truck drivers,
26 like Plaintiffs, as alleged in this complaint to the LWDA via online filing and to Defendants by
27 certified mail.

28

1 210. Plaintiffs are aggrieved employees as defined in California Labor Code section 2699(a).
2 They bring this cause of action on behalf themselves, the State of California, and other former
3 aggrieved employee truck drivers employed by Defendants as hourly commercial drivers, excluding
4 bus drivers, who operated over-the-road highway vehicles in excess of 26,000 gross vehicle weight
5 in California with respect to the violations Plaintiffs and aggrieved employees experienced as alleged
6 in this complaint.

7 211. Plaintiffs have complied with the pre-filing requirements set forth in California Labor Code
8 § 2699.3 by giving written notice to the LWDA and the employer(s)—by certified mail with return
9 receipt requested—of the alleged California Labor Code and Wage Order violations and the specific
10 facts and theories in support thereof.

11 212. As described in this complaint and in Plaintiffs' LWDA notice, Plaintiffs allege that
12 Defendants violated the following provisions of the California Labor Code with respect to their
13 employment of Plaintiffs and similarly aggrieved truck drivers: sections 1197 and 1197.1 for failing
14 to compensate for all hours worked; sections 204, 1194, 1194.2 and 1198 for failure to pay overtime
15 wages; sections 226.7 for failing to comply with the meal period and rest break requirements, and
16 failing to pay premium wages in lieu of unprovided meal period and/or rest breaks; sections 226 and
17 226.3 for providing inaccurate wage statements; section 2800 and 2802 for failure to reimburse
18 business expenses; and sections 201, 202 and 203 for failing to timely pay all wages owed to former
19 employees.

20 213. As a consequence, Defendants have violated the rights of Plaintiffs and the rights of others
21 employed by Defendants as hourly commercial drivers, excluding bus drivers, who operated over-
22 the-road highway vehicles in excess of 26,000 gross vehicle weight in California. Defendants are
23 therefore liable for PAGA penalties for violations of the California Labor Code as described in this
24 Complaint.

25 214. Defendants are liable for civil penalties for their failure to compensate for all hours worked,
26 pursuant to California Labor Code §§ 1197 and 1197.1.

27 215. Defendants are liable for civil penalties for violating the meal period and rest break
28 requirements of California Labor Code § 226.7.

1 216. Defendants are liable for civil penalties for failing to provide accurate wage statements
2 pursuant to California Labor Code §§ 226 and 226.3.

3 217. PAGA permits Plaintiffs to recover civil penalties on behalf of themselves, the State of
4 California and other current or former aggrieved employees, plus attorneys' fees, interest, and costs
5 for violations of the Labor Code. Cal. Labor Code §§ 2699 *et seq.*

6 218. As such, Plaintiffs seek civil penalties, interest thereon, and awards of reasonable costs and
7 attorney's fees on behalf of themselves, the State of California and other employed by Defendants
8 as hourly commercial drivers, excluding bus drivers, who operated over-the-road highway vehicles
9 in excess of 26,000 gross vehicle weight in California for the applicable PAGA statutory period prior
10 through December 10, 2022.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs pray for judgment against Defendants and relief as follows:

- 13 a) That the Court assume supplemental jurisdiction over all state law claims pursuant to 28
14 U.S.C. § 1367;
- 15 b) That the Court certify the class defined herein;
- 16 c) For an order appointing Plaintiffs as class representative, and Plaintiffs' Counsel as class
17 counsel;
- 18 d) Under Count One:
- 19 1. Grant judgment against Defendants, jointly and severally during their respective
20 years as employers, and in favor of Plaintiff Sarmiento and the sub-class of domestic
21 workers, in an amount equal to their actual damages or statutory damages of up to \$500,
22 whichever is greater, pursuant to 29 U.S.C. § 1854(c), for Defendants' breach of the
23 following provisions of AWPA:
- 24 i. Wage payment;
- 25 ii. Recordkeeping;
- 26 iii. Unlicensed contracting for Defendant Fresh Foods;
- 27 iv. Failure to verify contractor license for Defendant Rava Ranches;
- 28 v. False and misleading disclosures; and

1 vi. Violation of the working arrangement.

2 2. Declare that Defendants have violated the Migrant & Seasonal Agricultural Worker
3 Protection Act, 29 U.S.C. § 1801 *et seq.* as described above.

4 3. Enjoin Defendants from further violating the Migrant and Seasonal Agricultural
5 Worker Protection Act.

6 e) Under Count Two:

7 1. Grant judgment against Defendants, jointly and severally during their respective
8 years as employers, and in favor of Plaintiffs and the Class, for violations of California
9 Labor Code §§ 1182.11-1182.13, and 1197, such that:

10 i. Plaintiffs and the Class receive the full unpaid balance of their wages owed, as well
11 as liquidated damages in the amount of their minimum wage loss, during the Class
12 Period for the violation of their right to minimum wages pursuant to California Labor
13 Code §§ 1194, 1194.2 and 1197.

14 ii. Plaintiffs receive appropriate injunctive relief, including an order requiring
15 Defendants to comply with California's minimum wage requirements.

16 2. Find that Defendant Rava Ranches is liable as a client-employer for the violations
17 under Count Two pursuant to under California Labor Code § 2810.3.

18 3. Award Plaintiffs and the Class attorneys' fees and costs pursuant to California Labor
19 Code § 1194(a).

20 f) Under Count Three:

21 1. Grant judgment against Defendants, jointly and severally, and in favor of Plaintiff
22 and the Class, for violations of California Labor Code § 1194 such that:

23 i. Plaintiffs and the Class receive the full unpaid balance of their premium wages owed
24 during the Class Period.

25 ii. Plaintiffs receive appropriate injunctive relief, including an order requiring
26 Defendants to comply with California's overtime requirements.

27 2. Find that Defendant Rava Ranches is liable as a client-employer for the violations
28 under Count Three pursuant to under California Labor Code § 2810.3.

1 3. Award Plaintiffs and the Class attorneys' fees and costs pursuant to California Labor
2 Code § 1194(a).

3 g) Under Count Four:

4 1. Grant judgment against Defendants Fresh Harvest, SMD Logistics and Fresh Foods,
5 jointly and severally, and in favor of Plaintiff and the Class, for violations of California
6 Labor Code § 226.7 and the applicable employment contracts such that:

7 i. Plaintiffs and the Class receive the full unpaid balance of their premium wages owed
8 during the Class Period for meal periods.

9 h) Under Count Five:

10 1. Grant judgment against Defendants Fresh Harvest, SMD Logistics and Fresh Foods,
11 jointly and severally, and in favor of Plaintiff and the Class, for violations of California
12 Labor Code § 226.7 and the applicable employment contracts such that:

13 i) Plaintiffs and the Class receive the full unpaid balance of their premium wages owed
14 for rest breaks during the Class Period.

15 i) Under Count Six:

16 1. Grant judgment against Defendants, jointly and severally, and in favor of Plaintiffs
17 and the Class, for breach of contract such that:

18 i) Find Defendants breached the contracts as detailed in Plaintiffs' complaint;

19 ii) Find that Defendants failed to pay the domestic worker sub-class the prevailing wage
20 for truck driving;

21 iii) Find that Defendants failed to pay the H-2A worker sub-class the prevailing wage for
22 truck driving, nor wages equal to those paid domestic workers;

23 iv) Order that Plaintiffs and the Class receive the wages they were entitled to under the
24 applicable contracts for each hour they worked.

25 j) Under Count Seven:

26 1. Grant judgment against Defendants Fresh Harvest, SMD Logistics, and Fresh Foods,
27 jointly and severally, and in favor of Plaintiffs and the Class, for violation of California Labor
28 Code §§ 226 and 226.2 such that:

1 i) Plaintiffs and the Class receive the greater of their actual damages or \$50 for the
2 initial pay period in which a wage statement violation occurred, the greater of actual
3 damages or \$100 for each wage statement violation in a subsequent pay period, up to
4 the greater of actual damages or an aggregate \$4,000 penalty.

5 ii) Plaintiffs receive appropriate injunctive relief, including an order requiring
6 Defendants to comply with California’s wage statement requirements; and

7 2. Award Plaintiffs attorneys’ fees and costs pursuant to California Labor Code
8 §§ 226(e) and 226(h).

9 k) Under Count Eight:

10 1. Grant judgment against Defendants, jointly and severally, and in favor of Plaintiff
11 and the Class, for violations of California Business & Professions Code §§ 17200 *et seq.*
12 such that:

13 i) Plaintiffs and the Class receive all wages that they were unlawfully deprived of due
14 to Defendants’ unfair business practices.

15 ii) Plaintiffs and the Class recover wages as equitable relief for a period that extends the
16 statute of limitations or recovery period for wages to four (4) years.

17 2. For declaratory judgment that the actions, conduct, and practices of Defendants
18 complained of herein constitute unfair business practices under California Business &
19 Professions Code §§ 17200 *et seq.*

20 3. For an injunction and order permanently restraining and enjoining Defendants from
21 engaging in and continuing the unlawful and/or unfair policies and practices complained of
22 herein.

23 4. Award attorneys’ fees and costs pursuant to California Code of Civil Procedure
24 § 1021.5, as the Plaintiff is enforcing an important right affecting the public interest.

25 l) Under Count Nine:

26 1. Grant judgement against Defendants, jointly and severally, and in favor of Plaintiffs and
27 the Plaintiff Class for failure to pay all outstanding wages due upon separation from
28 employment in violation of Cal. Labor Code § 203; and

- 1 2. Award Plaintiffs and the Plaintiff Class the amount of one day's wages, up to a
- 2 maximum of 30 day's wages, per employee who was terminated or left their
- 3 employment with Defendants without timely receiving all outstanding wages due to
- 4 them on each such termination or separation of employment; and
- 5 3. Find that Defendant Rava Ranches is liable as a client-employer under California Labor
- 6 Code § 2810.3 for the wages owed pursuant to this Count.
- 7 m) Under Count Ten, grant judgment against Defendants, jointly and severally and in favor of
- 8 Plaintiffs and the similarly aggrieved truck drivers, for violations of California Labor Code
- 9 §§ 2699 *et seq.* such that:
 - 10 i) Plaintiffs and the similarly situated receive civil penalties payable to the State of
 - 11 California, Plaintiffs, and other aggrieved truck drivers employed by Defendants as
 - 12 hourly commercial drivers, excluding bus drivers, who operated over-the-road
 - 13 highway vehicles in excess of 26,000 gross vehicle weight in California for each
 - 14 violation of the California Labor Code as described in this Complaint, including,
 - 15 penalties under California Labor Code §§ 201-203, 204, 226, 226.3, 1194, 1194.2,
 - 16 1197, 1197.1, 1198, 2699(f) and 2698 *et seq.*
 - 17 1. Find that Plaintiffs are aggrieved employees within the meaning of California Labor
 - 18 Code §§ 2699 *et seq.*;
 - 19 2. Award Plaintiffs attorneys' fees and costs pursuant to California Labor Code
 - 20 § 2699(g).
 - 21 n) Awarding Plaintiffs and the Class pre-judgment interest of ten percent (10%) on the unpaid
 - 22 wages and compensation owed to Plaintiff and the Class under California Civil Code §§ 3287(a)
 - 23 and 3289(b), California Labor Code §§ 218.6, 1194 and 2802(b), and/or any other applicable
 - 24 provision providing for interest;
 - 25 o) Granting declaratory relief as appropriate;
 - 26 p) Casting all costs upon Defendants; and
 - 27 q) Awarding any such other and further relief, at law or in equity, as the Court deems just and
 - 28 proper.

